

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL **74-1104**

IN THE
United States Court of Appeals
For the Second Circuit

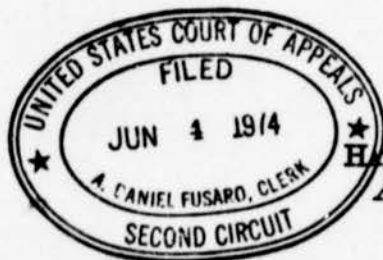
B
P/S

SILVER CHRYSLER PLYMOUTH, INC.,
Plaintiff-Appellee,
against

CHRYSLER MOTORS CORPORATION and
CHRYSLER REALTY CORPORATION,
Defendants-Appellants.

JOINT APPENDIX
VOLUME I OF TWO VOLUMES
(Pages 1a to 211a)

^E
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PAGINATION AS IN ORIGINAL COPY

INDEX

	Page
1. Docket Entries made herein in the United States District Court for the Eastern District of New York	1a
2. (a) Complaint filed June 14, 1973	5a
(b) Exhibit to Complaint: Dealer Relocation Agreement	11a
(c) Exhibit to Complaint: Lease Form	14a
3. (a) Notice of Motion served August 27, 1973	26a
(b) Supporting affidavit of Robert Ehrenbard sworn to on August 25, 1973	28a
(c) Exhibit A to 3(b): Completed Lease Form	40a
4. (a) Affidavit of Dale A. Schreiber sworn to on August 31, 1973	54a
(b) Exhibit to 4(a): Article from <u>Automotive News</u>	72a
(c) Affidavit of Clark J. Gurney sworn to on September 3, 1973	73a
(d) Affidavit of Hugh M. Baum sworn to on September 4, 1973	77a
(e) Affidavit of Alexander Hammond sworn to on August 31, 1973	80a
(f) Exhibit A to 4(e): Press release from Practicing Law Institute	90a
(g) Exhibit B to 4(e): Article from <u>Car Dealer Newsletter</u>	94a
(h) Exhibit C to 4(e): Article from <u>Automotive News</u>	95a
(i) Affidavit of Harold Reese, Sr., sworn to on August 31, 1973, with notation that similar affidavits have been filed by Malcolm Davis, Herbert C. Schwartz, Murray Kaplan, Charles P. Gallagher, Martin Frankel, Lester Rosenstock, Philip P. Buxbaum, Jr., Gerald Weiss, Edwin Lutzer, and Raphael Cohen	98a

	Page
5. Reply Affidavit of Robert Ehrenbard sworn to on September 17, 1973	100a
6. Selected Exhibits submitted with the affidavit of Robert Ehrenbard sworn to on September 17, 1973	133a
(a) Complaint in <u>Pearlman v. Markin</u> , 69 Civ. 5397	134a
(b) Stipulation of Discontinuance with Prejudice on the Merits in <u>Long Island Motors, Inc. v. Chrysler Motors Corp.</u> , 66 Civ. 3660	152a
(c) Complaint in <u>Checker Motors Corp. v. Chrysler Corp.</u> , 64 Civ. 866	153a
(d) Answer and Counterclaim in <u>Checker Motors Corp. v. Chrysler Corp.</u> , 64 Civ. 866	165a
(e) Affidavit of Robert Ehrenbard submitted in <u>Checker Motors Corp. v. Chrysler Corp.</u> , 64 Civ.	188a
(f) Excerpts from Objections to Subpoena in <u>Pearlman v. Markin</u> , 69 Civ. 5397	204a
(g) Article from New York Times of October 16, 1966	205a
(h) Article from Automotive News of October 17, 1966	206a
(i) Article from New York Times of October 11, 1966	209a
(j) Summons in <u>Ace Dodge, Inc. v. New York Region Dodge Advertising Association, Inc.</u>	210a
(k) Complaint in <u>Rocco Motor Sales Corp. v. Chrysler Motors Corp.</u>	212a
(l) Complaint in <u>Bayside Motors, Inc. v. Chrysler Corp.</u>	220a
(m) Answer of Chrysler Corporation in <u>Bayside Motors, Inc. v. Chrysler Corp.</u>	242a

	Page
(n) <u>Answer of Chrysler Motors Corporation in Bayside Motors, Inc. v. Chrysler Corp.</u>	248a
(o) <u>Complaint in Long Island Motors, Inc. v. Chrysler Motors Corp.</u>	254a
(p) <u>Complaint in Chrysler Motors Corp. v. Estree Company.</u>	271a
(q) <u>Answer in Polk v. Cross & Brown Co.</u>	290a
(r) <u>Complaint in DiCarlo v. Chrysler Motors Corp., 68 Civ. 163</u>	293a
(s) <u>Amended Answer and Counterclaim in DiCarlo v. Chrysler Motors Corp., 68 Civ. 163</u>	302a
(t) <u>Appendix containing Complaint and Answer in Buono Sales, Inc. v. Chrysler Motors Corp.</u>	312a
(u) <u>Complaint in Levenson v. Chrysler Corp.</u>	337a
(v) <u>Answer in Levenson v. Chrysler Corp.</u>	341a
(w) <u>Complaint in Riteway Motors, Inc. v. Chrysler Corp.</u>	347a
(x) <u>Complaint in Young Motors, Inc. v. Chrysler Corp.</u>	351a
(y) <u>Complaint in Chrysler Motors Corp. v. Urban Investing Corp.</u>	358a
(z) <u>Complaint in Chrysler Motors Corp. v. R.G.R. Associates</u>	368a
(aa) <u>Complaint in Babylon Chrysler-Plymouth, Inc. v. Chrysler Motors Corp.</u>	370a
(bb) <u>Complaint in Chrysler Motors Corp. v. Wicks</u>	416a
(cc) <u>Cover and Page 37 of Chrysler Corporation, Annual Report for 1967</u>	426a
7. (a) <u>Affidavit of Dale A. Schreiber sworn to on October 8, 1973, omitting Exhibits annexed thereto</u>	428a

	Page
(b) Affidavit of Alexander Hammond sworn to on October 4, 1973	446a
8. (a) Affidavit of Robert Ehrenbard sworn to on October 30, 1973	448a
(b) Exhibit A to 8(a): Defendant's memorandum of law in <u>Rocco Motor Sales Corp. v. Chrysler Motors Corp.</u>	467a
(c) Exhibit B to 8(a): Defendant's reply memorandum of law in <u>Rocco Motor Sales Corp. v. Chrysler Motors Corp.</u>	478a
(d) Exhibit C to 8(a): Letter of April 27, 1970 from Dale A. Schreiber to Clark J. Gurney	486a
9. (a) Affidavit of Dale A. Schreiber sworn to on November 2, 1973	487a
(b) Exhibit A to 9(a): Request to produce documents in <u>Checker Motors Corp. v. Chrysler Corp.</u> 64 Civ. 866	490a
(c) Exhibit B to 9(a): Pages 1-2 transcript of October 15, 1970 hearing before the Honorable Walter R. Mansfield, United States District Judge for the Southern District of New York	492a
10. Memorandum And Order dated November 26, 1973 of the Honorable Jack B. Weinstein, United States District Judge for the Eastern District of New York.	494a
11. Memorandum And Order dated December 17, 1973 of the Honorable Jack B. Weinstein, United States District Judge for the Eastern District of New York.	505a
12. Notice of Appeal filed December 21, 1973 in the United States District Court for the Eastern District of New York.	506a
13. Order dated April 30, 1974 of the Honorable Jack B. Weinstein, United States District Judge for the Eastern District of New York.	507a

(v)

Page

14. Memorandum And Order dated August 23, 1973, of the Honorable Lloyd F. MacMahon, United States District Judge for the Southern District of New York.

508a

73C 853 APPEAL

DOCKET

WEINSTEIN, J.

TITLE OF CASE

ATTORNEYS

For Plaintiff:

- against -

Hammond & Schreiber

CHRYSLER MOTORS CORPORATION and

1185 Ave. of the Americas

CHRYSLER REALTY CORPORATION

New York, N.Y. 10036

869-9696

For Defendant **KELLEY DRYF. WARREN**

CLARK CARR & ELLIS

350 Park Ave.

N.Y. N.Y. 10022

752-5800

BASIS OF ACTION: VIOLATIONS OF AUTOMOBILE DEALER

FRANCHISE ACT

SEEKS: Injunctive & declaratory relief

JURY TRIAL CLAIMED

ON

[illegible]

ABSTRACT OF COSTS

RECEIPTS, REMARKS, ETC.

[illegible]

73C 853

2 a

SILVER CHRYSLER PLYMOUTH, INC. v. CHRYSLER MOTORS & ANO.

Date	CASES - PROCEEDINGS	AMOUNT REPORTED IN ENCLUMENT RETURNS
6-12-73	Complaint filed. Summons issued.	1 JSS
6/26/73	Summons returned & filed/executed.	2
7-2-73	Pltff's interrogatories to defts and request to produce filed.	3
7-12-73	By WEINSTEIN, J. - Order dtd 7-8-73 extending time to answer complaint to 8-9-73 filed.	4
7/26/73	By Weinstein, J. - Order dtd. 7/19/73 extending time of defts. to answer, etc. to 8/23/73 filed.	5
8-7-73	BY WEINSTEIN, J. Order dated August 6, 1973 for pre-trial conference on October 3, 1973 at 9:30 AM. FILED	6
8-10-73	By WEINSTEIN J. Order dated 8-8-73 Extending time of CHRYSLER MOTORS CO. et al to Sept. 6, 1973 filed.	7
8-10-73	Notice of Entry of order dated 8-8-73 filed.	8
8-10-73	Notice of motion to vacate order of 8-8-73 filed.	9
8-10-73	By WEINSTEIN, J. - Order dtd 8-9-73 denying pltff's motion filed 8-10-73 and setting 9-26-73 at 9:45 A.M. for pre-trial conference filed on document #9. (p/c mailed to pltff). <i>mm</i>	--
8-28-73	Notice of motion to dismiss the complaint, etc. ret. 9-6-73 and memorandum in support of defts' motion filed.	10/11
9-4-73	Memorandum in Opposition to Deft's Motion to dismiss the complaint filed.	12
9-4-73	Affidavits of Dale A. Schreiber et al filed.	13
9-6-73	By WEINSTEIN, J. - Order dtd 9-5-73 that the defts' time to answer to pltffs' interrogatories & request for production of documents is extended until a date to be fixed by this Court, etc. filed.	14
9-6-73	Before WEINSTEIN J. Defts motion dismissing the complaint etc. Case called & adj'd to 9-13-73 at 10:00AM	
9-10-73	Notice of Entry of order dtd. 9-5-73 filed.	15
9-13-73	Before WEINSTEIN, J. - Case called for defts' motion dismissing the complaint. Motion adjd to 9-18-73 at 9:30 am.	
9-18-73	Reply affidavit of Robert Ehrenbard and reply memorandum on motion for disqualification of attys filed.	16/17
9-18-73	Before WEINSTEIN, J. - Case called for hearing on defts' motion dismissing the complaint. Motion argued. Decision reserved. Pltff has three weeks to reply.	
9-26-73	Before WEINSTEIN, J. Case called-motion adj to 11-14-73 @ 9:45 AM	
9-26-73	Lttr of Ezra I Bialik to Judge Weinstein dtd. 9-25-73 filed.	18
9-28-73	By WEINSTEIN, J. - Order dtd 9-25-73 adjing pre trial to 11-14-73	(<i>cm</i>)

DATE	FILINGS-PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
	filed on document # 18.			---
10-1-73	By WEINSTEIN, J. Order dtd 9-25-73 adjourning pre-trial conference to 11-14-73 filed.			19
10-9-73	Affidavit of Dale A. Schreiber re. opposition to motion for dismissal. filed.			20
11-5-73	Letter of Dale A. Schreiber to Judge Weinstein dtd 11-2-73 re: affidavit filed.			21
11-5-73	Affidavit of Dale A. Schreiber in reply to defts' motion to dismiss, etc. filed.			22
11-5-73	Letter of Robert Ehrenbard to Judge Weinstein dtd 10-30-73 re: defts' motion to disqualify and enjoin Hammond & Schreiber, etc. filed.			23
11-5-73	Affidavit of Robert Ehrenbard in support of defts' motion to disqualify & enjoin plttf's attys from participation in this suit filed.			24.
11-14-73	Before WEINSTEIN, J.--Case called & pre trial conference adjd without date.			
11-27-73	By WEINSTEIN, J. -Memorandum and order dtd 11-26-73 denying defts' motion to disqualify plttf's counsel filed (p/c mailed to attys) <i>WJ</i>			25
12-11-73	Notice of motion & memor-andum in support of defts' motion to to amend order and to stay proceedings filed.			26/27
12-18-73	Plttf's memorandum in opposition to defts' motion for leave to appeal and other relief filed.			28
12-19-73	By WEINSTEIN, J.--Order dtd 12-17-73 denying motion to stay all proceedings, etc. filed. (p/c mailed to attys) Filed on document #26.			----
12-21-73	Notice of appeal filed. Duplicate of notice mailed to c of A. jn			29
12-26-73	Defts' reply memorandum on motion for certification & stay filed.			30
1-22-74	Letter from Alexander Hammond dtd 1-15-74 with annexed copy of judgment from C of A staying judgment pending appeal filed.			31
1-24-74	Copies of Petitioners' memorandum in support of petition for an extraordinary writ. Notice of petition & petition, notice of motion & affidavit filed.			32-34
1-24-74	Copy of order certified and handed to Louise Trice for delivery			---

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

73C 853

SILVER CHRYSLER PLYMOUTH, INC.,

Plaintiff,

-against-

CHRYSLER MOTORS CORPORATION and
CHRYSLER REALTY CORPORATION,

Defendants.

COMPLAINT

ENTERED

Diary

Register

73 C

JUN 12 4 53 PM '73

FILED

CLERK
U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

Plaintiff Silver Chrysler Plymouth, Inc. by
attorneys Hammond & Schreiber, alleges for its complaint as follows:

Jurisdiction

1. This action for damages, injunctive and declaratory relief arises out of defendants' violations of the Automobile Dealer Franchise Act (15 U.S.C. §§1221-25) and violations of state law. This Court's jurisdiction rests upon Sections 1331, 1332 and 1337 of the Judicial Code (28 U.S.C. §§1331, 1332, 1337), Section 2 of the Automobile Dealer Franchise Act (15 U.S.C. §1222), and principles of pendent jurisdiction. The amount in controversy exceeds the sum of ten thousand dollars, exclusive of interest and costs.

Parties

2. At all relevant times, plaintiff Silver Chrysler Plymouth, Inc. (sometimes hereinafter "Dealer-Tenant") has been and still is a corporation organized and existing under the laws of the State of New York with its principal place of business in Port Jefferson, New York. Since about November 1, 1966, Dealer-Tenant has been an authorized dealer of defendant Chrysler Motors Corporation in Chrysler and Plymouth automobiles. Dealer-Tenant is an "automobile dealer" within the meaning of Section 1(c) of the Automobile Dealer Franchise Act (15 U.S.C. §1221(c)).

①

3. At all relevant times, defendants Chrysler Motors Corporation ("Motors") and Chrysler Realty Corporation ("Realty") have been and still are corporations organized and existing under the laws of the State of Delaware with their principal places of business respectively in Highland Park and Troy, Michigan. Motors, a wholly-owned subsidiary of Chrysler Corporation ("Chrysler"), distributes automotive products manufactured by Chrysler including Chrysler and Plymouth automobiles and related parts and accessories. Motors, through its various divisions, has enfranchised dealers, including plaintiff, to purchase and resell, among other things, Chrysler and Plymouth automobiles at retail. Upon information and belief, Realty was formed as a subsidiary of Chrysler in or about late 1967, and Motors transferred to Realty its real estate operations, including various facilities and agreements with dealers pertaining to such facilities. Chrysler Motors and Realty have been and still are "automobile manufacturers" within the meaning of Section 1(a) of the Automobile Dealer Franchise Act (15 U.S.C. §1221(a)). Realty is also an "agent" of Chrysler and Motors within the meaning of Section 1(e) of the Automobile Dealer Franchise Act (15 U.S.C. §1221(e)) and otherwise.

First Claim for Relief

4. On or about January 30, 1967, Frank Silver, Dealer-Tenant's principal ("Silver"), was summoned to Motors' Regional Office to execute a so-called "Dealer Relocation Agreement" dated January 30, 1967 ("Relocation Agreement") with Motors. A true copy of the Relocation Agreement is annexed hereto as Exhibit 1. During this meeting, Motors' representatives represented to Silver that, under the Relocation Agreement, Dealer-Tenant would have a twenty-five year lease on a new facility ("factory facility") to be erected by Motors with rent computed under a formula that would give Motors a 5% return on its investment, plus return of its invested principal amortized over such twenty-five year period. Silver then and there executed the Relocation Agreement, paragraph 2(c) of which provided in pertinent part as follows:

"C. Upon Individual(s) and/or Dealership entering into a Chrysler Plymouth Agreement as provided in 'B' above, Chrysler and Individual(s) and/or Dealership (or a dealer corporation under Individual management) will enter into a Lease Agreement for the Facilities, which Lease Agreement shall be in form, attached marked Exhibit 'A'. *** In the event Chrysler purchases the land upon which the facilities are to be erected, the base rent shall be determined by Chrysler based upon a five per cent (5%) return upon Chrysler's total investment in the Facilities, amortized over a twenty-five (25) year period, which is equal to a factor of 7.02 per cent per year of Chrysler's total investment." (Emphasis added.)

The "Lease Agreement" attached as Exhibit "A" contained a term provision, which was left blank. All parties intended that Dealer-Tenant's lease on the factory facility would be for twenty-five years with rent computed under the above-described formula. On or about March 3, 1967, Dealer-Tenant received a copy of the Relocation Agreement executed by Motors. The term provision in the Lease Agreement attached as Exhibit "A" remained blank.

5. From at least 1965 through 1967, Motors represented to plaintiff and other dealers orally and in writing that it would construct new facilities and lease them to existing and future dealers for a twenty-five year term on the basis of a five per cent return plus amortization of the cost of the facilities over such term.

6. In or about late 1967, upon information and belief, Motors assigned to Realty the Relocation Agreement with Dealer-Tenant and/or Realty assumed the obligations thereunder.

7. Upon information and belief, Dealer-Tenant has paid rent in accordance with paragraph 2(c) of the Relocation Agreement.

8. The Relocation Agreement constitutes a lease, or an agreement to lease, the factory facility to Dealer-Tenant for a term of twenty-five years at a rent computed under the above-quoted formula provided in paragraph 2(c) thereof. As an assignee of, or as one having assumed, the Relocation Agreement, Realty is bound

thereby, and may not seek from Dealer-Tenant rent in excess of the rent reserved therein or otherwise seek to vary its terms and conditions.

9. In April 1973, Realty informed Dealer-Tenant that it insisted that Dealer-Tenant execute a new lease for the factory facility effective June 1, 1973 at a rent greater than that provided in paragraph 2(c) of the Relocation Agreement and containing more burdensome terms. Dealer-Tenant refused to execute such a new lease. On May 2, 1973, Dealer-Tenant executed an interim lease which was made subject to the outcome of this action and without prejudice thereto.

10. Realty is liable to Dealer-Tenant for any sums collected from Dealer-Tenant in excess of the amounts due and payable under the Relocation Agreement.

Second Claim for Relief

11. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 10 of this complaint and incorporates them by reference herein.

12. As assignor of the Relocation Agreement, Motors is liable, jointly with Realty and severally, to Dealer-Tenant for any damages as a result of past and future breaches of the Relocation Agreement.

Third Claim for Relief

13. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 12 of this complaint and incorporates them by reference herein.

14. Alternatively, the Relocation Agreement was not assigned to or assumed by Realty and is a valid and subsisting lease agreement for the factory facility with Motors.

Fourth Claim for Relief

15. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 14 of this complaint and incorporates them by reference herein.

16. Defendants have failed to act in a fair and equitable manner toward Dealer-Tenant in violation of Section 2 of the Automobile Dealer Franchise Act (15 U.S.C. §1222).

17. Defendants have, among other things, coerced and attempted to coerce Dealer-Tenant into forbearing from enforcement of its rights under the Relocation Agreement by threats of termination, non-renewal and otherwise. Dealer-Tenant has been and still is in a totally subservient relationship to defendants by virtue of, among other things, its reliance on Motors as its exclusive source of supply.

18. Defendants are liable to Dealer-Tenants for all damages sustained in the past and future by reason of their violations of the Automobile Dealer Franchise Act.

WHEREFORE, plaintiff prays for judgment against defendants jointly and severally

(a) declaring that

(1) the Relocation Agreement constitutes a valid and subsisting lease of the factory facilities to plaintiff for a term of twenty-five years at the rent and upon other terms and conditions provided therein, and

(11) that the Relocation Agreement, as described, is binding upon both defendants;

(b) enjoining defendants and their affiliates and the directors, officers, employees, attorneys, agents, and representatives thereof, and all other persons acting on behalf of any of them, from directly or indirectly evicting or removing, or attempting to evict or remove, plaintiff from the factory facilities, by court proceedings or otherwise, or interfering in any way with plaintiff's use of the factory facilities, except in accordance with the terms and conditions of the Relocation Agreement, and from otherwise taking, or threatening to take, any reprisals against plaintiff on account of the bringing of this action or otherwise;

(c) awarding plaintiffs all damages sustained in the past or future by reason of the matters alleged, plus interest;

(d) awarding plaintiff the costs and disbursements of this action; and

(e) granting such other and further preliminary and final relief as may be appropriate.

Dated: New York, New York
June 12, 1973

HAMMOND & SCHREIBER

By Richard C. Hammond
A Member of the Firm
Attorneys for Plaintiff
1185 Avenue of the Americas
New York, New York 10036
Tel.: (212) 869-9696

Dealer Relocation Agreement

CHRYSLER MOTORS CORPORATION, a Delaware Corporation (hereinafter called "Chrysler"),

Frank Silver (hereinafter called the "Individual(s)"),

and Silver Chrysler Plymouth, Inc. (hereinafter called the "Dealership")

desire to establish the terms and conditions under which the Individual(s) and/or Dealership will dis-

continue its present operations at 414 Main Street, Port Jefferson, New York

as a Chrysler Plymouth dealer, and the

Individual(s) and/or Dealership or a dealer corporation under Individual(s) management will locate in

facilities to be built by Chrysler and operate as a Chrysler Plymouth

dealer from such facilities subject to the terms of this agreement.

NOW, THEREFORE, on this 30th day of January, 1967, in considera-
tion of the above premises and the mutual promises hereinafter set forth, the parties hereto agree as
follows:

1. Chrysler will lease or purchase land located at Neaconsset-Port Jefferson Sta. Rd.
and Terryville Road, Port Jefferson Station, New York

and will construct upon such land a building or buildings required for the operation of a
Chrysler Plymouth retail automobile dealership
facility (which land, buildings, etc., are hereinafter called the "Facilities"), provided the neces-
sary building and use permits may be obtained from appropriate municipal or governmental authori-
ties. The Facilities to be built upon such land shall be in accordance with Chrysler's design and
specifications.

2. Upon completion of the Facilities, Chrysler will notify Individual(s) and/or Dealership that
the Facilities are ready for occupancy, and upon such notice by Chrysler:

- A. The Chrysler Plymouth Agreement currently in effect
between Chrysler and Individual(s) and/or Dealership shall terminate automatically and with-
out further notice from either party and Individual(s) and/or Dealership shall discontinue
all operations relating to the sale and service of Chrysler Plymouth
vehicles from its present location at 414 Main Street, Port Jefferson, New York

In connection with Individual(s) and/or Dealership's discontinuance of operations at its present location described above, Individual(s) and/or Dealership shall and without financial assistance from Chrysler, assume all costs incurred in the termination or other disposition of its lease obligations at its present location, including all costs incurred in the relocation of operations to the Facilities.

B. Upon termination of Individual(s) and/or Dealership's existing Chrysler
Plymouth Agreement as provided in "A" above, Chrysler and Individual(s) and/or Dealership (or a dealer corporation under Individual(s) management) will enter into a Chrysler Plymouth Agreement with respect to Chrysler Plymouth, Inc. operations at the Facilities.

C. Upon Individual(s) and/or Dealership entering into a Chrysler Plymouth Agreement as provided in "B" above, Chrysler and Individual(s) and/or Dealership (or a dealer corporation under Individual's management) will enter into a Lease Agreement for the Facilities, which Lease Agreement shall be in the form attached marked Exhibit "A". In the event Chrysler acquires through lease the land upon which the Facilities are to be erected, the base rent, exclusive of taxes and insurance, payable by Individual(s) and/or Dealership to Chrysler for the Facilities shall be determined by Chrysler based upon the rental obligation imposed upon Chrysler in the Ground Lease covering the property on which the Facility will be constructed, plus an amount equal to a five per cent (5%) return upon Chrysler's total investment in the improvements placed upon the property, amortized over a twenty-five (25) year period, which is equal to a factor of 7.02 per cent per year of Chrysler's total investment.

In the event Chrysler purchases the land upon which the Facilities are to be erected, the base rent shall be determined by Chrysler based upon a five per cent (5%) return upon Chrysler's total investment in the Facilities, amortized over a twenty-five (25) year period, which is equal to a factor of 7.02 per cent per year of Chrysler's total investment.

The parties hereto recognize that Chrysler has not as yet received Investment Committee approval for the acquisition of the land on which the Facilities will be constructed. In the event the Investment Committee approval is not obtained, or if the necessary building and use permits are not obtained from the proper municipal authorities as outlined in paragraph 11 of this Agreement, or if Chrysler's acquisition of the property is not finalized for any reason whatsoever, then this Agreement shall be null and void and of no further force and effect.

D. If for any reason Individual(s) and/or Dealership fails to enter into the Chrysler
Plymouth Agreement and Lease Agreement as provided in paragraph "B"
and "C" above, within 30 days after Chrysler notifies Individual(s) and/or Dealership that
the Facilities are ready for occupancy, Chrysler shall have no obligation to lease the Facili-
ties to Individual(s) and/or Dealership and Chrysler shall have no obligation to enter into
the Chrysler Plymouth Agreements with
Individual(s) and/or Dealership, but in such event the termination of Individual(s) and/or
Dealership's existing Chrysler Plymouth Agreement as
provided in paragraph "A" above shall be and remain effective.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day
and year first above written.

WITNESS:

[Signature]
R. Weyers

CHRYSLER MOTORS CORPORATION

BY:

G. T. HIGGINS

Vice-President

ITS

SILVER CHRYSLER PLYMOUTH, INC.

(Dealership)

BY:

[Signature]

President

ITS

WITNESS:

[Signature]
D. J. Pearson

[Signature]
STURGIS M. FAY

WITNESS:

(Individual)

(Individual)

(Individual)

Lease Agreement

PARTIES

THIS LEASE, made this day of, 19, between CHRYSLER MOTORS CORPORATION, a Delaware corporation, having an office at 7000 East Eleven Mile Road, Detroit, Michigan 48231, hereinafter designated "Landlord", and, whose address is, hereinafter designated "Tenant",

WITNESSETH:

Landlord, in consideration of the premises and of the rents hereinafter reserved and of the covenants, agreements and conditions herein contained to be kept and performed on the part of Tenant, does hereby rent unto Tenant, and Tenant does hereby hire and take, the parcel or parcels of land with the buildings and improvements now or hereafter erected thereon, situated and being in the State of described as follows:

THE DEMISED PREMISES

The above described property, and all buildings and building equipment, structures, improvements, machinery, equipment and fixtures, pavement, walks, fences, shrubbery and signs now or hereafter located on the above described property, (including, but not limited to, the items listed on the attached Schedule "A") except furniture and trade fixtures and other property belonging to Tenant, are herein collectively referred to as "the demised premises" and are to be used for motor vehicle sales and service operations only.

TERM

TO HAVE AND TO HOLD the demised premises, unto Tenant upon and subject to all the terms, covenants and conditions herein contained, for a term beginning on the day of, 19 and ending on the day of, 19 or until sooner terminated as hereinafter provided.

And Tenant does covenant and agree to and with Landlord as follows:

RENT

1. Tenant shall pay to Landlord at Landlord's office address above set forth or at such other place as Landlord may from time to time designate in writing, rent for the said term in the total amount of \$, which said rent shall be paid in monthly installments as follows:

..... in lawful money of the United States. Tenant agrees to pay the said rent in the manner aforesaid and such other sums as are hereinafter provided to be paid as additional rent and any and all other sums and charges hereinafter specified by separate payment and without setoff or deduction whatsoever.

TAXES AND ASSESSMENTS

2. All matters pertaining to the assessment and taxation of Tenant's personal property shall be Tenant's responsibility. All matters pertaining to the assessment for ad valorem tax purposes of the land, buildings and Landlord's personal property included in the demised premises shall be the sole responsibility of Landlord. Tenant shall pay to Landlord monthly in addition to the rental hereinabove stipulated, the sum of Dollars), which is an estimate of the monthly cost of the real and personal property taxes on the demised premises. Landlord will pay such taxes when the same, or any installment thereof, shall become due and payable. Landlord may make adjustments in the amount of the monthly payment required in this Paragraph 2 from time to time during the term of this lease, if necessary, in order to reflect any changes in the amount of taxes on the demised premises. Landlord shall give Tenant notice of any such adjustment at least 30 days prior to its effective date. For the purposes of this Paragraph 2, taxes are to be prorated on an annual basis prospectively from the earliest date the first installment of an annual tax becomes due and payable. If the tax is for other than an annual period, the proration shall be based upon the period covered. The sum hereinsabove in this paragraph provided for shall be used only for the payment of taxes and any excess on termination of this lease shall be refunded to Tenant.

Tenant shall also pay to Landlord on a monthly basis following notice from Landlord to Tenant of any special assessment levied, assessed, or imposed on the demised premises during the term of this lease, a sum equal to $1/12$ of the total amount of any such special assessment multiplied by .0732. Such notice shall specify the amount of the monthly payment required hereunder.

The payments provided to be made by Tenant in this Paragraph 2, shall be made on the first day of each calendar month during the term and shall be, for all purposes hereunder, additional rent and for

the nonpayment thereof Landlord shall have the same rights and remedies as are provided in this lease in the case of nonpayment of the monthly rent.

TERMINATION

3. Without limiting the rights or powers of cancellation of this lease as provided elsewhere herein, this lease may be cancelled at any time during the term (or any extension or renewal thereof) on the following basis:

a. This lease shall be null and void at the option of Landlord if:

(1) Tenant ceases to be an authorized Direct Dealer for Landlord's Products (at the demised premises) as a result of termination of any Direct Dealer Agreement at any time entered into between Tenant and Landlord, or any subsidiary of Landlord, when such termination results from either:

(a) Notice of termination by Tenant,

(b) Notice of termination by Landlord, or a subsidiary of Landlord,

(c) Mutual agreement between Tenant and Landlord, or a subsidiary of Landlord.

Landlord shall notify Tenant in writing of its election to treat this lease null and void hereunder. Thereupon, cancellation of this lease will be effective on the last day of the month in which such notice is mailed, at which time this lease shall terminate as though said date were originally fixed for the termination and expiration of this lease.

b. This lease shall be null and void without notice to either party, on the effective date provided hereinafter, if any Direct Dealer Agreement with Tenant for Landlord's Products (at the demised premises) shall terminate, expire or be cancelled for any reason not provided for in subdivisions (a), (b) or (c) of Paragraph 3. a. (1) of this lease, unless Tenant and Landlord, or a subsidiary of Landlord, enter into a superseding Direct Dealer Agreement for Landlord's Products at the demised premises. Cancellation of this lease hereunder shall be effective on the last day of the month in which any such termination of Tenant's Direct Dealer Agreement for Landlord's Products becomes effective, at which time this lease shall terminate as though said date were originally fixed herein for the termination and expiration of this lease.

UTILITIES

4. Tenant shall use the demised premises and each and every part thereof and the facilities, machinery and equipment therein contained at its own cost and expense, and shall pay or cause to be paid all charges for gas, electricity, light, heat, power, telephone and other service used, rendered or supplied upon or in connection with the demised premises and each and every part thereof.

**REPAIRS AND
MAINTENANCE**

5. Except as specifically provided in Paragraph 1A herein, Tenant covenants and agrees that it will at its own expense, during the continuance of this lease, keep the demised premises, including plate glass, in good order and repair, and Tenant shall promptly make any and all repairs or replacements necessary for that purpose, whether or not any of such repairs or replacements shall be interior or exterior, extraordinary as well as ordinary, and whether or not such repairs or replacements shall be of structural nature, and whether or not the same can be said to be within the present contemplation of the parties hereto; and Landlord may have access to the demised premises at reasonable times for the purpose of inspecting the same, but such right of access shall not be construed as obliging Landlord to make any of said repairs to, or replacement of, any part of the demised premises or as obliging Landlord to make any such inspection. Where an inspection reveals repairs or replacements are necessary, Landlord shall give Tenant notice in writing, and thereupon Tenant will, within 60 days after said notice, make such repairs in a good and workmanlike manner. In the event Tenant does not make the said repairs or replacements within 60 days after notice from Landlord, Landlord may thereupon terminate this lease or enter upon the premises and make the said repairs or replacements itself and charge the cost thereof to Tenant as additional rent hereunder. Tenant will, at all times during the term of this lease, keep the sidewalks adjoining the demised premises in good order and repair and free from snow, ice or any unlawful obstructions.

SURRENDER

6. Tenant shall and will on the last day of the term hereby granted or of any extension or renewal thereof, or sooner termination thereof, peaceably surrender and deliver up the demised premises into the possession of Landlord, its successors or assigns, in good order, condition and repair, damage by fire, explosion or the elements only excepted.

**CONDITION OF
PREMISES AT
TIME OF
LEASE**

7. Tenant further acknowledges that it has examined the demised premises prior to the making of this lease, and knows the condition thereof, and that no representations as to the condition or state of repairs thereof have been made by Landlord or its agents, which are not herein expressed, and Tenant hereby accepts the demised premises in their present condition.

**LAWS,
ORDINANCES,
ETC.**

8. Tenant will at all times during the term of this lease, at its own cost and expense, perform and comply with all present or future laws, rules, orders, ordinances, and regulations of the United States of America, and of state, county or city governments, and any authority, department or bureau thereof, and of any other municipal, governmental or lawful authority having jurisdiction of the premises whatsoever, relating to, or in any manner affecting, the demised premises, the adjacent sidewalks or any buildings thereon or the use thereof.

**COVENANT
AGAINST
ASSIGNMENT,
SUBLETTING**

9. Tenant covenants not to assign or transfer this lease or hypothecate or mortgage the same or sublet the demised premises or any part thereof, and any such assignment, transfer, hypothecation, mortgage or subletting shall be void.

**NONUSE,
BANKRUPTCY,
INSOLVENCY,
ETC.**

10. Tenant agrees that in the event, without the written consent of Landlord, the demised premises shall become and remain vacant or not used for a period of ten days while the same are suitable for use by Tenant or in the event they shall be used by any person other than Tenant, or if the estate created hereby shall be taken in execution, or by other process of law, or if Tenant shall file a voluntary petition in bankruptcy, or be declared bankrupt or insolvent, according to law, or any receiver be appointed for the business and property of Tenant, or if any assignment shall be made of Tenant's property for the benefit of creditors, then, and in such event, this lease may be cancelled at the option of Landlord.

**ALTERATIONS,
ADDITIONS AND
IMPROVEMENTS**

11. Tenant shall not make any alterations, changes, additions or improvements to the demised premises without Landlord's written consent, and all alterations, changes, additions or improvements made by either of the parties hereto upon the demised premises, except movable office furniture and trade fixtures put in at the expense of Tenant, shall become the property of Landlord and shall remain upon and be surrendered with the demised premises upon the expiration of this lease, or any sooner termination thereof, except as Landlord may elect otherwise as hereinafter provided. If Landlord shall so elect, then such alterations, changes, additions or improvements made by Tenant upon the demised premises as Landlord shall select, shall be removed by Tenant and Tenant shall restore the demised premises to the original condition thereof at its own cost and expense within thirty days after notice from Landlord of such election, such notice to be given not later than ten days after the expiration of this lease or any sooner termination thereof. The movable furniture and trade fixtures of Tenant, however, shall remain Tenant's property at all times and shall be removed at the termination of this lease, any damage to the premises in the course of such removal to be repaired by Tenant at Tenant's own cost and expense.

**RIGHT TO
MORTGAGE**

12. This lease is and shall be subject and subordinate to all mortgages and ground or underlying leases which may now or hereafter affect the real property demised hereunder, and to all renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and no further instrument of subordination shall be required by any mortgagee. In confirmation of such subordination, Tenant covenants and agrees to execute and deliver upon demand such further instrument or instruments subordinating this lease to the lien of any such mortgage or mortgages as shall be

desired by Landlord and any mortgagees or proposed mortgagees and hereby irrevocably appoints Landlord the attorney-in-fact of Tenant to execute and deliver any such instrument or instruments for and in the name of Tenant. Tenant further covenants and agrees to execute upon demand such further instrument or instruments (including cancellation and re-execution of this lease as a sublease) necessary to create a sublease of the demised premises to Tenant upon the same terms and conditions as are provided herein in the event that Landlord effects a sale and lease back of the demised premises.

**PUBLIC
LIABILITY
INSURANCE**

13. Tenant, at its expense, shall provide and keep in force for the benefit of Landlord and Tenant, respectively, comprehensive general liability insurance in the minimum limits of liability with respect to bodily injury of \$250,000.00 for each person and \$500,000.00 for each occurrence and in respect to property damage \$50,000.00 for each accident. The insurance shall include contractual liability coverage specifically insuring the agreements made by Tenant in this Paragraph 13 and in Paragraph 14 following, shall cover the entire demised premises, including sidewalks, streets and ways adjoining the demised premises, shall be issued by insurance companies and in form satisfactory to Landlord, shall provide for at least ten days prior written notice to Landlord in the event of cancellation or any material change, and copies of such policy or policies shall be delivered to Landlord prior to the commencement of the term of this lease and thereafter no later than ten days prior to the expiration date of the policy then in force.

**DAMAGE TO
PERSON OR
PROPERTY,
INDEMNIFICATION**

14. Landlord shall not in any event be responsible, and Tenant hereby specifically assumes responsibility for any injury or death of any persons (including employees of Tenant and Landlord) and damage, destruction or loss of use of any property, including the demised premises (except as specifically provided otherwise herein) occasioned by any event happening on or about the demised premises and the sidewalks, streets or curbs adjacent thereto. Tenant shall defend, indemnify and hold harmless Landlord from and against any and all claims, demands, suits, damages, liability and costs (including counsel fees and expenses) arising out of or in any manner connected with any act or omission, negligent or otherwise of Tenant, Landlord or Third Persons, or any of their agents, servants or employees which arise out of or are in any way connected with the erection, maintenance, use, operation, existence or occupation of the demised premises and the streets, sidewalks and curbs adjacent thereto.

Tenant further shall defend, indemnify and hold harmless Landlord from claims, demands, suits, liability for damages for bodily injury or death of any persons or damage or destruction of any property (including loss of use thereof) caused by or in any manner arising out of any breach, violation or non performance by Tenant of any covenant, term or provision of this lease.

**FIRE
INSURANCE**

15. Tenant shall not do or permit to be done any act or thing, or omit to do any act or thing, which will invalidate or be in conflict with fire insurance policies covering the building or buildings constituting a part of the demised premises, provided that such policies will permit Tenant to use the premises for the purposes set forth in Paragraph 3 hereof. If by reason of any act or omission committed, suffered or permitted by Tenant the rate of fire insurance upon the building, improvements, machinery and equipment constituting a part of the demised premises shall be increased above the rate which would otherwise be charged, Tenant shall reimburse Landlord as additional rent hereunder, upon demand, for that part of all fire insurance premiums thereafter paid by Landlord applicable to the period of this lease which shall have been charged by reason of such increase.

**LOSS BY FIRE
AND OTHER
PERILS**

16. Landlord hereby waives all claims against Tenant for loss or damage to the building or buildings erected on the demised premises caused by fire or explosion or perils normally insured against by standard fire and extended coverage insurance policies, regardless of the cause of such damage including damage resulting from the negligence of Tenant, its agents, servants or employees.

**EMINENT
DOMAIN**

17. If the entire property of which the demised premises forms a part shall be taken by reason of the exercise of the power of eminent domain for any public or quasi public use or purpose, this lease shall terminate on the date title to the premises vests in the taking authority, and rent shall be prorated to such date of termination. If a part of said property be so taken and the part not so taken is, in the opinion of Landlord, insufficient for the reasonable operation of Tenant's business, such opinion to be delivered to Tenant within twenty days after title to the property vests in the taking authority, then either party may cancel or terminate this lease at any time within thirty days after such opinion is given, by giving the other party written notice of cancellation of this lease, and rent shall be prorated to the effective date of cancellation. All damages awarded for such taking shall belong to and be the property of Landlord whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee of the premises herein leased or for improvements to the demised premises made by Tenant. In the event that neither party gives notice to the other of cancellation as hereinabove in this paragraph provided, this lease shall continue in full force and effect as to that portion of the premises not so taken under the same terms and conditions herein contained, except the rent thereafter payable shall be abated in such amount as the parties agree and Landlord shall promptly thereafter perform all work and furnish all materials necessary to restore and create as a whole architectural unit that portion of the building and improvements (and of the machinery and equipment which are an integral part thereof) on that part of the demised premises not so taken. In the event the parties cannot agree on the amount of rent abatement within ten days after expiration of the

thirty day notice period hereinafter in this paragraph provided, this lease shall thereupon terminate, unless the parties agree to submit the amount of rent abatement to arbitration on mutually agreeable terms.

**DAMAGE OR
DESTRUCTION
TO BUILDINGS**

18. If and whenever during the term hereby demised the building or buildings erected on the demised premises shall be destroyed or damaged by fire or explosion or perils normally insured against by standard fire and extended coverage insurance policies then and in every such event:

(a) If the damage or destruction is such that in the opinion of Landlord, to be given to Tenant not later than thirty (30) days after notice to Landlord by Tenant of the happening of such damage or destruction, it cannot be repaired with reasonable diligence within one hundred and twenty (120) days from the date of such opinion, then either Landlord or Tenant may, within ten (10) days next succeeding the giving of Landlord's opinion as aforesaid, terminate this lease by giving to the other notice in writing of such termination, in which event this lease and the term hereby demised shall thereupon cease and be at an end and the rent and all other payments for which Tenant is liable under the terms of this lease shall be apportioned and paid in full to the date of such destruction or damage; in the event that neither Landlord nor Tenant so terminate this lease, then Landlord shall repair the said building or buildings with all reasonable speed and the rent hereby reserved shall abate from the date of the happening of the damage until the damage shall be made good to the extent of enabling Tenant to use and occupy the demised premises;

(b) If the damage or destruction is such that in the opinion of Landlord, to be given to Tenant not later than thirty (30) days after notice to Landlord by Tenant of the happening of such damage or destruction, it can be repaired with reasonable diligence within one hundred and twenty (120) days from the date of such opinion, then the rent hereby reserved shall abate from the date of the happening of such damage until the damage shall be made good to the extent of enabling Tenant to use and occupy the demised premises and Landlord shall repair the damage with all reasonable speed; but notwithstanding the giving of such opinion by the Landlord, Landlord shall not be liable to Tenant if Landlord shall not actually repair such damage within said 120 day period if Landlord shall proceed diligently with such repair work.

(c) If, in the opinion of Landlord, the damage can be made good as aforesaid within one hundred and twenty (120) days of the date of such opinion and the damage is such that the demised premises are capable of being partially used for the purposes authorized herein, then, until such damage has been repaired, the rent shall abate in the proportion that the part of the

said building which is rendered unfit for occupancy bears to the whole of the said building and Landlord shall repair the damage with all reasonable speed; but notwithstanding the giving of such opinion by the Landlord, Landlord shall not be liable to Tenant if Landlord shall not actually repair such damage within said 120 day period if Landlord shall proceed diligently with such repair work.

MECHANIC'S LIENS

19. Tenant shall not do or suffer anything to be done whereby the demised premises may be encumbered by any mechanic's or other lien or order for the payment of money, and Tenant shall at its own cost and expense, whenever and as often as any mechanic's lien purporting to be for labor, material or services furnished or to be furnished to Tenant, or other lien or order for the payment of money (except such as are based on acts or omissions of Landlord) shall be filed against the demised premises, cause the same to be canceled and discharged of record within thirty (30) days after the date of filing thereof, and further shall indemnify and save harmless Landlord from and against any and all costs, expenses, claims, losses or damages, resulting therefrom or by reason thereof.

DEFAULTS, REMEDIES

20. If Tenant shall fail to pay to Landlord any installment of rent, or any additional rent or other charges as and when the same are required to be paid hereunder, and such default shall continue for a period of fifteen (15) days after notice, or if Tenant shall default in the performance of any of the other terms, covenants or conditions of this lease and such default shall continue for a period of thirty (30) days after notice, (except as otherwise in this lease provided), or if any of the events set forth in Paragraph 11 hereinabove occur, or if Tenant shall be lawfully dispossessed from the demised premises during the term of this lease, then Landlord, without prejudice to any remedies which may be available for arrears of rent or for Tenant's breach of covenant, shall have the option to declare this lease immediately forfeited and the said term ended, and to re-enter and repossess said premises, with or without process of law, using such force as may be necessary to remove all persons or chattels therefrom, and Landlord shall not be liable to any prosecution or for any damages by reason of such re-entry or forfeiture; but notwithstanding such re-entry by Landlord, the Tenant shall, nevertheless, remain and continue liable to Landlord in a sum equal to the rent and any additional rent herein reserved for the balance of the term herein originally granted. Landlord shall not be liable in any way whatsoever for failure to re-let the demised premises. In the event of a breach or threatened breach by Tenant of any of the covenants or provisions of this lease, Landlord shall have the right of injunction and the right to invoke any penalty allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Mention in this lease of any particular remedy shall not preclude Landlord from any other remedy, in law or in equity. Tenant hereby expressly

waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the demised premises, by reason of the violation of Tenant of any of the covenants and conditions of this lease, or otherwise. The word "re-enter" as used herein is not restricted to its technical legal meaning, but is used in its broadest sense.

EFFECT OF WAIVER

21. The failure of Landlord to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions and agreements of this lease, or to exercise any option herein conferred, shall not be considered as waiving or relinquishing for the future any such terms, covenants or conditions, agreements or options, but the same shall continue and shall remain in full force and effect; and the receipt of any rent or any part thereof, whether the rent be that specifically reserved or that which may become payable under any of the covenants herein contained, and whether the same be received from Tenant or from any one claiming under or through it or otherwise shall not be deemed to operate as a waiver of the rights of Landlord to enforce the payment of rent or charges of any kind previously due or which may thereafter become due, or the right to terminate this lease and to recover possession of the demised premises by summary proceedings or otherwise, as Landlord may deem proper, or to exercise any of the rights or remedies reserved to Landlord hereunder or which Landlord may have at law, in equity or otherwise.

HOLDOVER

22. In the event that Tenant shall remain in the demised premises after the expiration or sooner termination of the term of this lease without having executed a new written lease with Landlord, such holding over shall not constitute a renewal or extension of this lease. Landlord may, at its option, elect to treat Tenant as one who has not removed at the end of his term, and thereupon be entitled to all the remedies against Tenant provided by law in that situation, or Landlord may elect, at its option, to treat such holding over as a tenancy from month to month only.

"FOR SALE" AND "TO LET" SIGNS

23. Landlord may, during the term of this lease, at reasonable times and during usual business hours, enter the premises to view them, and, except in case of renewal or extension, may, at any time within two (2) months next preceding the expiration of the specified term, show the premises to others for the purpose of rental or sale, and may affix to any suitable parts of the premises a notice for lease or sale thereof.

RENT TO BE "NET"

24. It is intended that the rent provided for herein shall be an absolutely net return to Landlord for the term of this lease, free of any expenses or charges with respect to the demised premises, except as otherwise specifically provided in this lease. Except as herein otherwise provided, this Para-

graph 24 shall not apply to any law based on statute, laws of ordinance or administrative interpretations thereof in effect at the date of this lease.

ENTIRE AGREEMENT

25. This lease contains the entire agreement between the parties as to the premises and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest.

NOTICES

26. Any notice, bill, statement, or communication which Landlord may desire or be required to give to Tenant, shall be deemed sufficiently given or rendered if in writing, delivered to Tenant personally or sent by registered or certified mail addressed to Tenant at the demised premises or at the last known business address of Tenant or left at either of the aforesaid places addressed to Tenant, and the time of the rendition of such bill or statement and of the giving of such notice or communication shall be deemed to be the time when the same is delivered to Tenant, mailed or left at the premises as herein provided. Any notice by Tenant to Landlord must be served by registered or certified mail addressed to Landlord at the address hereinabove set forth or at such other address as Landlord shall designate by written notice.

SIGNS

27. Tenant agrees it will not erect or cause to be erected any signs, notices or advertisements upon the demised premises or affix any such thereto, unless the same shall be erected and affixed according to law, and advertise only a business or use of the demised premises specifically authorized by the provisions hereof. Tenant shall not erect any sign that by reason of its weight or size might damage the demised premises, nor shall Tenant paint any signs, notices or advertising on the exterior walls of the building or buildings without Landlord's written consent. Signs placed on the premises by Tenant shall be removed by it not later than thirty (30) days after the expiration of this lease or any sooner termination thereof, unless Landlord and Tenant agree otherwise, and upon removal of any such signs Tenant shall restore the demised premises to their original condition except for reasonable wear and tear.

SEVERABILITY

28. If it shall be found that any part of this lease is illegal or unenforceable in any state or other political body having jurisdiction, such part or parts of the lease shall be of no force and effect in that state or political body in which they are illegal and unenforceable and this lease shall be treated as if such part or parts had not been inserted.

MARGINAL NOTES

29. The marginal notes are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this lease nor in any way affect this lease. Words

25

of any gender in this lease shall be held to include any other gender and words in the singular number shall be held to include the plural when the sense requires.

**SUCCESSORS
AND ASSIGNS**

30. Except as otherwise provided herein, the terms and conditions of this lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, representatives, successors or assigns.

**QUIET
ENJOYMENT**

31. Upon paying the rent, additional rent and other sum or sums of money and charges as herein provided and upon performing all of the covenants, conditions and agreements aforesaid, on Tenant's part to be paid, observed and performed, Tenant shall and may peaceably and quietly have, hold and enjoy the demised premises for the term aforesaid, subject, however, to the terms of this lease.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in person or by a duly authorized officer.

WITNESSED BY:

LANDLORD: CHRYSLER MOTORS
CORPORATION

BY _____

ITS _____

TENANT:

BY _____

ITS _____

26 a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK



----- x
SILVER CHRYSLER PLYMOUTH, INC., :

Plaintiff, :

- against - :

CHRYSLER MOTORS CORPORATION and :
CHRYSLER REALTY CORPORATION, :

Defendants. - :
----- x

73 Civ. 853
(Weinstein, J.)

NOTICE OF MOTION



S I R S :

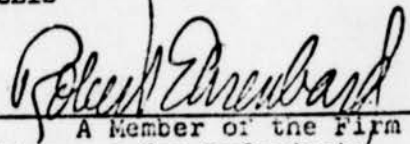
PLEASE TAKE NOTICE, that upon the complaint, the affidavit of Robert Ehrenbard submitted herewith, and the exhibit annexed thereto, the undersigned will move this Court before the Honorable Jack B. Weinstein, one of the Judges thereof, in Courtroom 10 of the United States Courthouse, 225 Cadmen Plaza East, Brooklyn, New York, on the 6th day of September, 1973, at 10 o'clock a.m., or as soon thereafter as counsel can be heard, for an order (1) dismissing the complaint herein on the grounds of the disqualification of plaintiff's attorneys, Hammond & Schreiber, and disqualifying and enjoining the said attorneys from playing any role or participating, assisting or advising plaintiff or any of its attorneys, agents, employees or representatives in connection with the preparation or prosecution of the present suit; and further, (2) dismissing the complaint with prejudice on the ground that the action is barred by the statute of frauds, Rule 12(b)(6) of the Federal Rules of

27 a

Civil Procedure ("F.R.Civ.P.") and N.Y. General Obligations Law, Sections 5-701 and 5-703; and (3) granting such other or further relief as may be just and proper.

Yours, etc.

KELLEY DRYE WARREN CLARK CARR &
ELLIS

By 
A Member of the Firm
Attorneys for Defendants
350 Park Avenue
New York, New York 10022
(212) PLaza 2-5800

TO:

HAMMOND & SCHREIBER, ESQS.
Attorneys for Plaintiff
1185 Avenue of the Americas
New York, New York 10036
(212) 869-9696

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
:
SILVER CHRYSLER PLYMOUTH, INC., :
Plaintiff, : 73 Civ. 853
 : (Weinstein, J.)
-against- :
 : AFFIDAVIT IN SUPPORT
 : OF MOTION
CHRYSLER MOTORS CORPORATION and :
CHRYSLER REALTY CORPORATION, :
 :
Defendants. :
-----X

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

ROBERT EHRENBARD, being duly sworn, deposes and
says:

I am a member of the firm of Kealey Drye Warren
Clark Carr & Ellis, attorneys for defendants herein. I
submit this affidavit in support of the motion (1) to
dismiss the complaint herein on the grounds of the disquali-
fication of plaintiff's attorneys, Hammond & Schreiber, and
to disqualify and enjoin the said attorneys from playing any
role or participating, assisting or advising plaintiff or
any of its attorneys, agents, employees or representatives
in connection with the preparation or prosecution of the
present suit; and further, (2) to dismiss the complaint
with prejudice on the ground that the action is barred by
the statute of frauds, Rule 12(b)(6) of the Federal Rules of
Civil Procedure ("F.R.Civ.P.") and N.Y. General Obligations
Law, Sections 5-701 and 5-703. I respectfully suggest,
however, that it would be inappropriate to consider the

second branch of the motion, or for any other proceedings to be had in this action, until the question of the disqualification of plaintiff's attorneys has been determined.

The present action, brought by a Chrysler-Plymouth dealer, alleges breach by defendants of an oral promise to lease real property for a 25-year period and, as a consequence of such alleged breach, violation of the Dealers' Day in Court Act, 15 U.S.C. §1221, et seq.

1. Disqualification of Plaintiff's Attorneys

We believe that we must move for the disqualification of plaintiff's attorneys because Dale A. Schreiber, a member of the firm of Hammond & Schreiber, attorneys for plaintiff herein, was associated with my firm from 1965 until 1969. My firm has acted as attorneys for Chrysler Corporation ("Chrysler") since 1925 and for many of its subsidiaries and affiliates thereafter. During his association with my firm, Mr. Schreiber, often under my supervision, was personally engaged in extensive legal work for and representation of Chrysler, Chrysler Motors Corporation ("Motors"), and other Chrysler companies, and obtained immeasurable confidential information regarding the practices, procedures, methods of operation, activities, contemplated conduct, legal problems and litigations of those companies, and it would therefore be unethical and improper for him now to represent the plaintiff in this action against Motors and Chrysler Realty Corporation ("Realty").* Further, as explained in the

* Realty, as is indicated in paragraph 6 of the complaint herein, is an assignee of certain former rights and agreements of Motors with regard to plaintiff, and while with this firm Mr. Schreiber became involved with real estate work on Motors' behalf, including matters of the type since transferred to Realty. Realty therefore has the same rights as against Mr. Schreiber as has Motors. Significantly, the alleged assignment from Motors to Realty took place during the period of Mr. Schreiber's association with this firm.

memorandum filed herewith, the disqualification of Mr. Schreiber renders the firm of which he is a partner similarly disqualified. It is submitted that the disqualification of plaintiff's attorneys also taints the complaint itself and other papers with impropriety, and requires dismissal of the pleading.

Mr. Schreiber became associated with this firm, then known as Kelley Drye Newhall Maginnes & Warren, in August 1965 and, except for a short leave of absence, continued his association here until February 1969. Throughout that period this firm was, and since their incorporation this firm has been, general counsel or counsel to Chrysler, Motors, and other Chrysler companies, and has advised and represented those companies in hundreds of matters affecting virtually every aspect of their operations, activities and possible conduct. Our representation of Chrysler interests has ranged from major stockholder and anti-trust litigations to warranty litigation, and has encompassed extensive corporate, tax, labor and real estate work, including Motors' and Realty's relationships with automobile dealers, to all of which matters Mr. Schreiber had free and ready access during his association with us. Mr. Schreiber devoted a great portion of his time to working on dozens of matters, in litigation and otherwise, for Chrysler companies. Among the matters Mr. Schreiber worked on were several suits, like the present one, by automobile dealers against Chrysler and/or Motors.

Indeed, at least one of those dealer suits worked on by Mr. Schreiber, as well as other suits being handled by this office during Mr. Schreiber's association, were based, in whole or in part, upon a claimed violation of the Dealers' Day in Court Act, which statute is also relied upon by plaintiff in the present action (pages 1 and 5 of the complaint herein). He thus became familiar with the considerations leading Chrysler to various defensive positions, and was involved in deciding which defensive positions to take and which not to. Another suit in which Mr. Schreiber was involved, and other matters then handled by this firm, like the case at bar, related to real estate questions concerning a parcel of land upon which dealership facilities were located. Other Chrysler matters upon which Mr. Schreiber worked involved the overall methods of operation and business practices of Chrysler, Motors, and other Chrysler companies generally, including their relations with Chrysler dealers such as the plaintiff herein and certain other real estate matters.*

* While it would, of course, be possible for me to spell out in greater detail the nature and extent of Mr. Schreiber's representation of Chrysler interest during his association with my firm, I refrain from doing so here both because I consider it unnecessary and because to do so in this affidavit would be improper; it would require me to set out the very contents of the confidential communications between Mr. Schreiber and Chrysler, Motors and other companies and/or their agents, the very confidentiality of which we are seeking to have preserved. Indeed, as the memorandum filed herewith sets out, the courts have recognized this precise point, and have accordingly ruled that the basis for disqualification need be set out only in general terms so as to preserve the confidentiality of communications. Nonetheless, we are prepared, should the Court deem it necessary and proper, to discuss in some further detail Mr. Schreiber's representation of Chrysler and Motors as the Court may deem appropriate and necessary.

It should be noted that Mr. Schreiber's active representation of Chrysler interests occurred during the very period of time when the Dealer Relocation Agreement with plaintiff, Exhibit A to the complaint herein, as well as other documents between plaintiff and defendants, were being negotiated and agreed to. (See, for example, the Lease Agreement dated April 26, 1968, a copy of which is annexed hereto as Exhibit "A"). Also during Mr. Schreiber's association, this firm was involved in real estate situations regarding the relocation of other dealerships -- including one situation which has now developed into a litigation stated by Mr. Hammond, on pages 2-3 of his affidavit in support of the motion dated August 9, 1973, to be related to, and involved with the same matters as, the case at bar. In addition, it is very significant that defendant Realty itself was organized during that same time period, while Mr. Schreiber was associated with my firm, and this firm was then involved with Realty's financing and other plans. Further, Mr. Schreiber worked on Chrysler's and Motors' behalf in defending a dealers' suit in which Mr. Hammond represented the dealer. Yet Mr. Schreiber has seen fit to switch sides, to join with Mr. Hammond in representing interests directly adverse to his former clients. Also significant is the fact that Mr. Schreiber's work for Chrysler from 1965-1969 may itself have influenced Chrysler policies and practices, yet Mr. Schreiber is now both utilizing his knowledge thereof against defendants, and is in a position to attack Chrysler policies and practices.

It is thus apparent that during the course of his association with this firm, Mr. Schreiber acquired and gained access to a wealth of information about the practices and activities of the defendants herein. That information derived not only from his own work on specific matters, but also from his access to all of this firm's files and papers on both active and former matters, as well as discussions and conversations held with defendants' employees or other persons representing them relating to defendants' activities, operations and possible future conduct. As an associate here he was exposed without restriction, not only to the matters on which he worked, but also to the entire scope of this firm's work. Through his continuous daily contacts with defendants' employees and other attorneys and members of the staff of my firm, and access to our files, he had the opportunity to learn and must in fact have learned* a great deal about other litigations and matters handled for Chrysler and/or Motors and/or other Chrysler companies, including dealers' suits based on the Dealers' Day in Court Act or otherwise, numerous Chrysler real estate matters, and even several real estate matters related to premises on which dealership facilities were located or to be relocated, the very situation presented herein. This information was made available to him solely as an attorney and on a strictly confidential basis, with the understanding that it would be used only in the clients' interests and pursuant to their approval.

* Apart for the actuality of such learning, Mr. Schreiber is irrebutably presumed to have shared information with other attorneys in my firm, as is demonstrated in the accompanying memorandum.

Instead, Mr. Schreiber has now placed himself in a position to utilize that very information on behalf of plaintiff, and to the detriment and injury of the clients he formerly represented. It is thus very likely, if not inevitable, that, whether consciously or not, Mr. Schreiber has already utilized confidential disclosures by the defendants in the drafting of the complaint and other papers herein, and would continue to use such information to defendants' detriment throughout the course of this proceeding if Hammond & Schreiber are not disqualified and enjoined from further participation and assistance herein.

In addition to the great likelihood of such actual impropriety and abuse of confidentiality, there is also an inescapable appearance of impropriety which this Court must prevent, in order to protect the reputation of the Bar. As discussed in the accompanying memorandum, the appearance of impropriety, as much as impropriety itself, is a ground for disqualification of attorneys and requires court correction. Further, this Court must disqualify plaintiff's attorneys as a matter of policy, so that parties can be assured of complete freedom to fully communicate with their attorneys without fear that the confidentiality of their communications will be readily abused, or that information given to their attorneys today will be used against them in the future.

While Mr. Hammond, the partner of Mr. Schreiber, is not himself a former attorney for Chrysler, he too is disqualified because of the partnership relationship, and because as his partner Mr. Schreiber undoubtedly has already shared and exchanged and will continue to freely share and

exchange with him information about parties to litigations being handled by their firm. Mr. Hammond thereby does and will obtain from Mr. Schreiber much of the information regarding defendants' practices, activities and possible future conduct that was made available to Mr. Schreiber in confidence during his association with my firm. As explained in the accompanying memorandum, disqualification of an attorney automatically results in the disqualification of the firm of which he is a partner, and the rule even extends to a firm employing a disqualified associate. The grounds for the rule, once again, are to prevent both the actual misuse of confidential information and equally important, the appearance of impropriety.

It is respectfully submitted that the considerations discussed above require a dismissal of the complaint as well as disqualification of the attorneys. The complaint itself and the interrogatories served by plaintiff appear to be tainted with a breach of confidentiality, and, as indicated above, they probably were drafted, and the tactics underlying them were doubtlessly conceived, at least in part, on the basis of information formerly obtained in confidence by Mr. Schreiber; his dealings with defendants, their agents and attorneys were far too intense and pervasive to permit any other conclusion. In order that the future of this proceeding not be tainted by papers drafted in violation of professional ethics, the complaint, I submit, should be stricken and suppressed, without prejudice to the service of a new complaint and further proceedings by plaintiff, if so

advised, by attorneys not subject to disqualification, and acting entirely without the participation, assistance or advice of disqualified counsel.

2. Statute of Frauds

Defendants' motion seeks additional relief, to wit, dismissal of the complaint with prejudice pursuant to Rule 12(b)(6) of the F.R.Civ.P., on the grounds that claims asserted by plaintiff are barred by the statute of frauds. N.Y. General Obligations Law, Sections 5-701 and 5-703. It is evident from the complaint that the basis of each of plaintiff's causes of action, including the one based on the Dealers' Day in Court Act, is an alleged breach by defendants of an alleged oral promise to lease certain real property to plaintiff for a 25-year period at a rent to be computed in accordance with paragraph 2(c) of the Dealer Relocation Agreement, annexed to the complaint as Exhibit "A".

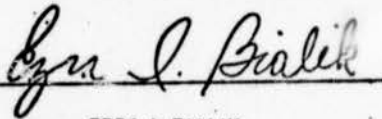
Pursuant to Section 5-701 of the General Obligations Law every agreement not to be performed within one year, and pursuant to Section 5-703 every promise to convey a leasehold interest for a period of more than one year, is void unless in writing and signed by the party to be charged. Here, of course, the alleged promise to lease for 25 years was not in writing. On the contrary, the Lease Agreement dated April 26, 1968 executed by plaintiff and Realty, a copy of which is annexed hereto as Exhibit "A", and which was pointedly neither attached to nor mentioned in the complaint herein, expressly provides, at the bottom

of page 1, that the term of the lease is only five years, from June 1, 1968 through May 31, 1973, unless sooner terminated. Thus, the Lease Agreement unmistakably refutes plaintiff's claim that there was an agreement to lease the property for a period longer than five years. Further, paragraph 22 of the Lease Agreement, providing that Motors could treat plaintiff as a holdover or a month to month tenant after termination of the term of the Agreement, similarly refutes plaintiff's claim. It states that plaintiff's "holding over shall not constitute a renewal or extension of this lease", thus contemplating that a new lease with different terms would be entered into upon expiration of the 5 year term if plaintiff were to remain on the property. Nor does there appear to be any writing signed by defendants to support plaintiff's position. Paragraph 2(c) of the Dealer Relocation Agreement says merely that the rent shall be calculated according to a formula which takes into account a 25-year amortization; it does not represent, however, that the term of the lease will be 25 years. Indeed, as plaintiff states (in paragraph 4 of the complaint), the lease term of the form of lease attached to the Dealer Relocation Agreement remained blank, and it offers no support for the claimed oral promise to lease for 25 years. In any event, however, the Dealer Relocation Agreement was in all respects superceded and supplanted by the Lease Agreement, which provides, in paragraph 25, that it "contains the entire agreement between the parties as to the premises". That provision clearly refutes the contention of paragraph 8 of the complaint herein that the Relocation Agreement has the effect of a lease or an agreement to lease.

It is accordingly submitted that the basis of plaintiff's complaint is totally refuted by a writing signed by both parties, and that there appears to be no writing to support the claimed promise to lease for 25 years. The complaint must accordingly be dismissed with prejudice pursuant to Rule 12(b)(6) of the F.R.Civ.P. However, as previously, we suggest that it would be inappropriate for any further proceedings to be had in this action until the question of the disqualification of plaintiff's attorneys is determined.


Robert Ehrenbard

Sworn to before me this
25th day of August, 1973.



EZRA I. BIALIK
NOTARY PUBLIC, State of New York
No. 31-5311160
Qualified in New York County
Commission Expires March 30, 1974

36 a

40 a Lease Agreement

PARTIES

THIS LEASE, made this 26 day of April, 19 68, between CHRYSLER REALTY CORPORATION, a Delaware corporation, having an office at SILVER 7000 East Eleven Mile Road, Detroit, Michigan 48231, hereinafter designated "Landlord", and CHRYSLER-PLYMOUTH, INC., whose address is PORT JEFFERSON, NEW YORK, hereinafter designated "Tenant",

WITNESSETH:

Landlord, in consideration of the premises and of the rents hereinafter reserved and of the covenants, agreements and conditions herein contained to be kept and performed on the part of Tenant, does hereby rent unto Tenant, and Tenant does hereby hire and take, the parcel or parcels of land with the buildings and improvements now or hereafter erected thereon, situated and being in the SUFFOLK State of NEW YORK, described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

THE DEMISED PREMISES

The above described property, and all buildings and building equipment, structures, improvements, machinery, equipment and fixtures, pavement, walks, fences, shrubbery and signs now or hereafter located on the above described property, (including, but not limited to, the items listed on the attached Schedule "A") except furniture and trade fixtures and other property belonging to Tenant, are herein collectively referred to as "the demised premises" and are to be used for motor vehicle sales and service operations only.

TERM

TO HAVE AND TO HOLD the demised premises, unto Tenant upon and subject to all the terms, covenants and conditions herein contained, for a term beginning on the 1st day of JUNE, 1968 and ending on the 31st day of MAY, 1973 or until sooner terminated as hereinafter provided.

And Tenant does covenant and agree to and with Landlord as follows:

RENT

1. Tenant shall pay to Landlord at Landlord's office address above set forth or at such other place as Landlord may from time to time designate in writing, rent for the said term in the total amount of \$ 172,860.00, which said rent shall be paid in monthly installments as follows: TWO THOUSAND EIGHT HUNDRED EIGHTY ONE (\$2,881.00) DOLLARS TO BE PAID IN ADVANCE ON THE FIRST BUSINESS DAY OF EACH MONTH DURING THE TERM HEREOF

.....
in lawful money of the United States. Tenant agrees to pay the said rent in the manner aforesaid and such other sums as are hereinafter provided to be paid as additional rent and any and all other sums and charges hereinafter specified by separate payment and without setoff or deduction whatsoever.

TAXES AND ASSESSMENTS

2. All matters pertaining to the assessment and taxation of Tenant's personal property shall be Tenant's responsibility. All matters pertaining to the assessment for ad valorem tax purposes of the land, buildings and Landlord's personal property included in the demised premises shall be the sole responsibility of Landlord. Tenant shall pay to Landlord monthly in addition to the rental hereinabove stipulated, the sum of SIX HUNDRED TEN Dollars (\$ 610.00), which is an estimate of the monthly cost of the real and personal property taxes on the demised premises. Landlord will pay such taxes when the same, or any installment thereof, shall become due and payable. Landlord may make adjustments in the amount of the monthly payment required in this Paragraph 2 from time to time during the term of this lease, if necessary, in order to reflect any changes in the amount of taxes on the demised premises. Landlord shall give Tenant notice of any such adjustment at least 30 days prior to its effective date. For the purposes of this Paragraph 2, taxes are to be prorated on an annual basis prospectively from the earliest date the first installment of an annual tax becomes due and payable. If the tax is for other than an annual period, the proration shall be based upon the period covered. The sum hereinabove in this paragraph provided for shall be used only for the payment of taxes and any excess on termination of this lease shall be refunded to Tenant.

Tenant shall also pay to Landlord on a monthly basis following notice from Landlord to Tenant of any special assessment levied, assessed, or imposed on the demised premises during the term of this lease, a sum equal to 1/12 of the total amount of any such special assessment multiplied by .0792. Such notice shall specify the amount of the monthly payment required hereunder.

The payments provided to be made by Tenant in this Paragraph 2, shall be made on the first day of each calendar month during the term and shall be, for all purposes hereunder, additional rent and for

42 a

the nonpayment thereof Landlord shall have the same rights and remedies as are provided in this lease in the case of nonpayment of the monthly rent.

TERMINATION

3. Without limiting the rights or powers of cancellation of this lease as provided elsewhere herein, this lease may be cancelled at any time during the term (or any extension or renewal thereof) on the following basis:

a. This lease shall be null and void at the option of Landlord if:

(1) ~~Tenant ceases to be~~ an authorized Direct Dealer for Landlord's Products (at the demised premises) as a result of termination of any Direct Dealer Agreement at any time entered into between Tenant and Landlord, or any subsidiary of Landlord, when such termination results from either:

- (a) Notice of termination by Tenant,
- (b) Notice of termination by Landlord, or a subsidiary of Landlord,
- (c) Mutual agreement between Tenant and Landlord, or a subsidiary of Landlord.

Landlord shall notify Tenant in writing of its election to treat this lease null and void hereunder. Thereupon, cancellation of this lease will be effective on the last day of the month in which such notice is mailed, at which time this lease shall terminate as though said date were originally fixed for the termination and expiration of this lease.

b. This lease shall be null and void without notice to either party, on the effective date provided hereinafter, if any Direct Dealer Agreement with Tenant for Landlord's Products (at the demised premises) shall terminate, expire or be cancelled for any reason not provided for in subdivisions (a), (b) or (c) of Paragraph 3. a. (1) of this lease, unless Tenant and Landlord, or a subsidiary of Landlord, enter into a superseding Direct Dealer Agreement for Landlord's Products at the demised premises. Cancellation of this lease hereunder shall be effective on the last day of the month in which any such termination of Tenant's Direct Dealer Agreement for Landlord's Products becomes effective, at which time this lease shall terminate as though said date were originally fixed herein for the termination and expiration of this lease.

UTILITIES

4. Tenant shall use the demised premises and each and every part thereof and the facilities, machinery and equipment therein contained at its own cost and expense, and shall pay or cause to be paid all charges for gas, electricity, light, heat, power, telephone and other service used, rendered or supplied upon or in connection with the demised premises and each and every part thereof.

**REPAIRS AND
MAINTENANCE**

5. Except as specifically provided in Paragraph 18 herein, Tenant covenants and agrees that it will at its own expense, during the continuance of this lease, keep the demised premises, including plate glass, in good order and repair, and Tenant shall promptly make any and all repairs or replacements necessary for that purpose, whether or not any of such repairs or replacements shall be interior or exterior, extraordinary as well as ordinary, and whether or not such repairs or replacements shall be of structural nature, and whether or not the same can be said to be within the present contemplation of the parties hereto; and Landlord may have access to the demised premises at reasonable times for the purpose of inspecting the same, but such right of access shall not be construed as obliging Landlord to make any of said repairs to, or replacement of, any part of the demised premises or as obliging Landlord to make any such inspection. Where an inspection reveals repairs or replacements are necessary, Landlord shall give Tenant notice in writing, and thereupon Tenant will, within 60 days after said notice, make such repairs in a good and workmanlike manner. In the event Tenant does not make the said repairs or replacements within 60 days after notice from Landlord, Landlord may thereupon terminate this lease or enter upon the premises and make the said repairs or replacements itself and charge the cost thereof to Tenant as additional rent hereunder. Tenant will, at all times during the term of this lease, keep the sidewalks adjoining the demised premises in good order and repair and free from snow, ice or any unlawful obstructions.

SURRENDER

6. Tenant shall and will on the last day of the term hereby granted or of any extension or renewal thereof, or sooner termination thereof, peaceably surrender and deliver up the demised premises into the possession of Landlord, its successors or assigns, in good order, condition and repair, damage by fire, explosion or the elements only excepted.

**CONDITION OF
PREMISES AT
TIME OF
LEASE**

7. Tenant further acknowledges that it has examined the demised premises prior to the making of this lease, and knows the condition thereof, and that no representations as to the condition or state of repairs thereof have been made by Landlord or its agents, which are not herein expressed, and Tenant hereby accepts the demised premises in their present condition.

**LAWS,
ORDINANCES,
ETC.**

8. Tenant will at all times during the term of this lease, at its own cost and expense, perform and comply with all present or future laws, rules, orders, ordinances, and regulations of the United States of America, and of state, county or city governments, and any authority, department or bureau thereof, and of any other municipal, governmental or lawful authority having jurisdiction of the premises whatsoever, relating to, or in any manner affecting, the demised premises, the adjacent sidewalks or any buildings thereon or the use thereof.

**COVENANT
AGAINST
ASSIGNMENT,
SUBLETTING**

9. Tenant covenants not to assign or transfer this lease or hypothecate or mortgage the same or sublet the demised premises or any part thereof, and any such assignment, transfer, hypothecation, mortgage or subletting shall be void.

**NO USE,
BANKRUPTCY,
INSOLVENCY,
ETC.**

10. Tenant agrees that in the event, without the written consent of Landlord, the demised premises shall become and remain vacant or not used for a period of ten days while the same are suitable for use by Tenant or in the event they shall be used by any person other than Tenant, or if the estate created hereby shall be taken in execution, or by other process of law, or if Tenant shall file a voluntary petition in bankruptcy, or be declared bankrupt or insolvent, according to law, or any receiver be appointed for the business and property of Tenant, or if any assignment shall be made of Tenant's property for the benefit of creditors, then, and in such event, this lease may be cancelled at the option of Landlord.

**ALTERATIONS,
ADDITIONS AND
IMPROVEMENTS**

11. Tenant shall not make any alterations, changes, additions or improvements to the demised premises without Landlord's written consent, and all alterations, changes, additions or improvements made by either of the parties hereto upon the demised premises, except movable office furniture and trade fixtures put in at the expense of Tenant, shall become the property of Landlord and shall remain upon and be surrendered with the demised premises upon the expiration of this lease, or any sooner termination thereof, except as Landlord may elect otherwise as hereinafter provided. If Landlord shall so elect, then such alterations, changes, additions or improvements made by Tenant upon the demised premises as Landlord shall select, shall be removed by Tenant and Tenant shall restore the demised premises to the original condition thereof at its own cost and expense within thirty days after notice from Landlord of such election, such notice to be given not later than ten days after the expiration of this lease or any sooner termination thereof. The movable furniture and trade fixtures of Tenant, however, shall remain Tenant's property at all times and shall be removed at the termination of this lease, any damage to the premises in the course of such removal to be repaired by Tenant at Tenant's own cost and expense.

**RIGHT TO
MORTGAGE**

12. This lease is and shall be subject and subordinate to all mortgages and ground or underlying leases which may now or hereafter affect the real property demised hereunder, and to all renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and no further instrument of subordination shall be required by any mortgagee. In confirmation of such subordination, Tenant covenants and agrees to execute and deliver upon demand such further instrument or instruments subordinating this lease to the lien of any such mortgage or mortgages as shall be

desired by Landlord and any mortgagees or proposed mortgagees and hereby irrevocably appoints Landlord the attorney-in-fact of Tenant to execute and deliver any such instrument or instruments for and in the name of Tenant. Tenant further covenants and agrees to execute upon demand such further instrument or instruments (including cancellation and re-execution of this lease as a sublease) necessary to create a sublease of the demised premises to Tenant upon the same terms and conditions as are provided herein in the event that Landlord effects a sale and lease back of the demised premises.

**PUBLIC
LIABILITY
INSURANCE**

13. Tenant, at its expense, shall provide and keep in force for the benefit of Landlord and Tenant, respectively, comprehensive general liability insurance in the minimum limits of liability with respect to bodily injury of \$250,000.00 for each person and \$500,000.00 for each occurrence and in respect to property damage \$50,000.00 for each accident. The insurance shall include contractual liability coverage specifically insuring the agreements made by Tenant in this Paragraph 13 and in Paragraph 14 following, shall cover the entire demised premises, including sidewalks, streets and ways adjoining the demised premises, shall be issued by insurance companies and in form satisfactory to Landlord, shall provide for at least ten days prior written notice to Landlord in the event of cancellation or any material change, and copies of such policy or policies shall be delivered to Landlord prior to the commencement of the term of this lease and thereafter no later than ten days prior to the expiration date of the policy then in force.

**DAMAGE TO
PERSON OR
PROPERTY,
DEMNIFICATION**

14. Landlord shall not in any event be responsible, and Tenant hereby specifically assumes responsibility for any injury or death of any persons (including employees of Tenant and Landlord) and damage, destruction or loss of use of any property, including the demised premises (except as specifically provided otherwise herein) occasioned by any event happening on or about the demised premises and the sidewalks, streets or curbs adjacent thereto. Tenant shall defend, indemnify and hold harmless Landlord from and against any and all claims, demands, suits, damages, liability and costs (including counsel fees and expenses) arising out of or in any manner connected with any act or omission, negligent or otherwise of Tenant, Landlord or Third Persons, or any of their agents, servants or employees which arise out of or are in any way connected with the erection, maintenance, use, operation, existence or occupation of the demised premises and the streets, sidewalks and curbs adjacent thereto.

Tenant further shall defend, indemnify and hold harmless Landlord from claims, demands, suits, liability for damages for bodily injury or death of any persons or damage or destruction of any property (including loss of use thereof) caused by or in any manner arising out of any breach, violation or nonperformance by Tenant of any covenant, term or provision of this lease.

**FIRE
INSURANCE**

15. Tenant shall not do or permit to be done any act or thing, or omit to do any act or thing, which will invalidate or be in conflict with fire insurance policies covering the building or buildings constituting a part of the demised premises, provided that such policies will permit Tenant to use the premises for the purposes set forth in Paragraph 3 hereof. If by reason of any act or omission committed, suffered or permitted by Tenant the rate of fire insurance upon the building, improvements, machinery and equipment constituting a part of the demised premises shall be increased above the rate which would otherwise be charged, Tenant shall reimburse Landlord as additional rent hereunder, upon demand, for that part of all fire insurance premiums thereafter paid by Landlord applicable to the period of this lease which shall have been charged by reason of such increase.

**LOSS BY FIRE
AND OTHER
PERILS**

16. Landlord hereby waives all claims against Tenant for loss or damage to the building or buildings erected on the demised premises caused by fire or explosion or perils normally insured against by standard fire and extended coverage insurance policies, regardless of the cause of such damage including damage resulting from the negligence of Tenant, its agents, servants or employees.

**EMINENT
DOMAIN**

17. If the entire property of which the demised premises forms a part shall be taken by reason of the exercise of the power of eminent domain for any public or quasi public use or purpose, this lease shall terminate on the date title to the premises vests in the taking authority, and rent shall be prorated to such date of termination. If a part of said property be so taken and the part not so taken is, in the opinion of Landlord, insufficient for the reasonable operation of Tenant's business, such opinion to be delivered to Tenant within twenty days after title to the property vests in the taking authority, then either party may cancel or terminate this lease at any time within thirty days after such opinion is given, by giving the other party written notice of cancellation of this lease, and rent shall be prorated to the effective date of cancellation. All damages awarded for such taking shall belong to and be the property of Landlord whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee of the premises herein leased or for improvements to the demised premises made by Tenant. In the event that neither party gives notice to the other of cancellation as hereinabove in this paragraph provided, this lease shall continue in full force and effect as to that portion of the premises not so taken under the same terms and conditions herein contained, except the rent thereafter payable shall be abated in such amount as the parties agree and Landlord shall promptly thereafter perform all work and furnish all materials necessary to restore and create as a whole architectural unit that portion of the building and improvements (and of the machinery and equipment which are an integral part thereof) on that part of the demised premises not so taken. In the event the parties cannot agree on the amount of rent abatement within ten days after expiration of the

thirty day notice period hereinabove in this paragraph provided, this lease shall thereupon terminate, unless the parties agree to submit the amount of rent abatement to arbitration on mutually agreeable terms.

**DAMAGE OR
DESTRUCTION
TO BUILDINGS**

18. If and whenever during the term hereby demised the building or buildings erected on the demised premises shall be destroyed or damaged by fire or explosion or perils normally insured against by standard fire and extended coverage insurance policies then and in every such event:

(a) If the damage or destruction is such that in the opinion of Landlord, to be given to Tenant not later than thirty (30) days after notice to Landlord by Tenant of the happening of such damage or destruction, it cannot be repaired with reasonable diligence within one hundred and twenty (120) days from the date of such opinion, then either Landlord or Tenant may, within ten (10) days next succeeding the giving of Landlord's opinion as aforesaid, terminate this lease by giving to the other notice in writing of such termination, in which event this lease and the term hereby demised shall thereupon cease and be at an end and the rent and all other payments for which Tenant is liable under the terms of this lease shall be apportioned and paid in full to the date of such destruction or damage; in the event that neither Landlord nor Tenant so terminate this lease, then Landlord shall repair the said building or buildings with all reasonable speed and the rent hereby reserved shall abate from the date of the happening of the damage until the damage shall be made good to the extent of enabling Tenant to use and occupy the demised premises;

(b) If the damage or destruction is such that in the opinion of Landlord, to be given to Tenant not later than thirty (30) days after notice to Landlord by Tenant of the happening of such damage or destruction, it can be repaired with reasonable diligence within one hundred and twenty (120) days from the date of such opinion, then the rent hereby reserved shall abate from the date of the happening of such damage until the damage shall be made good to the extent of enabling Tenant to use and occupy the demised premises and Landlord shall repair the damage with all reasonable speed; but notwithstanding the giving of such opinion by the Landlord, Landlord shall not be liable to Tenant if Landlord shall not actually repair such damage within said 120 day period if Landlord shall proceed diligently with such repair work.

(c) If, in the opinion of Landlord, the damage can be made good as aforesaid within one hundred and twenty (120) days of the date of such opinion and the damage is such that the demised premises are capable of being partially used for the purposes authorized herein, then, until such damage has been repaired, the rent shall abate in the proportion that the part of the

said building which is rendered unfit for occupancy bears to the whole of the said building and Landlord shall repair the damage with all reasonable speed; but notwithstanding the giving of such opinion by the Landlord, Landlord shall not be liable to Tenant if Landlord shall not actually repair such damage within said 120 day period if Landlord shall proceed diligently with such repair work.

MECHANIC'S LIENS

19. Tenant shall not do or suffer anything to be done whereby the demised premises may be encumbered by any mechanic's or other lien or order for the payment of money, and Tenant shall at its own cost and expense, whenever and as often as any mechanic's lien purporting to be for labor, material or services furnished or to be furnished to Tenant, or other lien or order for the payment of money (except such as are based on acts or omissions of Landlord) shall be filed against the demised premises, cause the same to be canceled and discharged of record within thirty (30) days after the date of filing thereof, and further shall indemnify and save harmless Landlord from and against any and all costs, expenses, claims, losses or damages, resulting therefrom or by reason thereof.

DEFAULTS, REMEDIES

20. If Tenant shall fail to pay to Landlord any installment of rent, or any additional rent or other charges as and when the same are required to be paid hereunder, and such default shall continue for a period of fifteen (15) days after notice, or if Tenant shall default in the performance of any of the other terms, covenants or conditions of this lease and such default shall continue for a period of thirty (30) days after notice, (except as otherwise in this lease provided), or if any of the events set forth in Paragraph 11 hereinabove occur, or if Tenant shall be lawfully dispossessed from the demised premises during the term of this lease, then Landlord, without prejudice to any remedies which may be available for arrears of rent or for Tenant's breach of covenant, shall have the option to declare this lease immediately forfeited and the said term ended, and to re-enter and repossess said premises, with or without process of law, using such force as may be necessary to remove all persons or chattels therefrom, and Landlord shall not be liable to any prosecution or for any damages by reason of such re-entry or forfeiture; but notwithstanding such re-entry by Landlord, the Tenant shall, nevertheless, remain and continue liable to Landlord in a sum equal to the rent and any additional rent herein reserved for the balance of the term herein originally granted. Landlord shall not be liable in any way whatsoever for failure to re-let the demised premises. In the event of a breach or threatened breach by Tenant of any of the covenants or provisions of this lease, Landlord shall have the right of injunction and the right to invoke any penalty allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Mention in this lease of any particular remedy shall not preclude Landlord from any other remedy, in law or in equity. Tenant hereby expressly

waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the demised premises, by reason of the violation of Tenant of any of the covenants and conditions of this lease, or otherwise. The word "re-enter" as used herein is not restricted to its technical legal meaning, but is used in its broadest sense.

EFFECT OF WAIVER

21. The failure of Landlord to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions and agreements of this lease, or to exercise any option herein conferred, shall not be considered as waiving or relinquishing for the future any such terms, covenants or conditions, agreements or options, but the same shall continue and shall remain in full force and effect; and the receipt of any rent or any part thereof, whether the rent be that specifically reserved or that which may become payable under any of the covenants herein contained, and whether the same be received from Tenant or from any one claiming under or through it or otherwise shall not be deemed to operate as a waiver of the rights of Landlord to enforce the payment of rent or charges of any kind previously due or which may thereafter become due, or the right to terminate this lease and to recover possession of the demised premises by summary proceedings or otherwise, as Landlord may deem proper, or to exercise any of the rights or remedies reserved to Landlord hereunder or which Landlord may have at law, in equity or otherwise.

HOLDOVER

22. In the event that Tenant shall remain in the demised premises after the expiration or sooner termination of the term of this lease without having executed a new written lease with Landlord, such holding over shall not constitute a renewal or extension of this lease. Landlord may, at its option, elect to treat Tenant as one who has not removed at the end of his term, and thereupon be entitled to all the remedies against Tenant provided by law in that situation, or Landlord may elect, at its option, to treat such holding over as a tenancy from month to month only.

"FOR SALE" AND "TO LET" SIGNS

23. Landlord may, during the term of this lease, at reasonable times and during usual business hours, enter the premises to view them, and, except in case of renewal or extension, may, at any time within two (2) months next preceding the expiration of the specified term, show the premises to others for the purpose of rental or sale, and may affix to any suitable parts of the premises a notice for lease or sale thereof.

RENT TO BE "NET"

24. It is intended that the rent provided for herein shall be an absolutely net return to Landlord for the term of this lease, free of any expenses or charges with respect to the demised premises, except as otherwise specifically provided in this lease. Except as herein otherwise provided, this Para-

graph 24 shall not apply to any tax based on statutes, laws or ordinances or administrative interpretations thereof in effect at the date of this lease.

**ENTIRE
AGREEMENT**

25. This lease contains the entire agreement between the parties as to the premises and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest.

NOTICES

26. Any notice, bill, statement, or communication which Landlord may desire or be required to give to Tenant, shall be deemed sufficiently given or rendered if in writing, delivered to Tenant personally or sent by registered or certified mail addressed to Tenant at the demised premises or at the last known business address of Tenant or left at either of the aforesaid places addressed to Tenant, and the time of the rendition of such bill or statement and of the giving of such notice or communication shall be deemed to be the time when the same is delivered to Tenant, mailed or left at the premises as herein provided. Any notice by Tenant to Landlord must be served by registered or certified mail addressed to Landlord at the address hereinabove set forth or at such other address as Landlord shall designate by written notice.

SIGNS

27. Tenant agrees it will not erect or cause to be erected any signs, notices or advertisements upon the demised premises or affix any such thereto, unless the same shall be erected and affixed according to law, and advertise only a business or use of the demised premises specifically authorized by the provisions hereof. Tenant shall not erect any sign that by reason of its weight or size might damage the demised premises, nor shall Tenant paint any signs, notices or advertising on the exterior walls of the building or buildings without Landlord's written consent. Signs placed on the premises by Tenant shall be removed by it not later than thirty (30) days after the expiration of this lease or any sooner termination thereof, unless Landlord and Tenant agree otherwise, and upon removal of any such signs Tenant shall restore the demised premises to their original condition except for reasonable wear and tear.

SEVERABILITY

28. If it shall be found that any part of this lease is illegal or unenforceable in any state or other political body having jurisdiction, such part or parts of the lease shall be of no force and effect in that state or political body in which they are illegal and unenforceable and this lease shall be treated as if such part or parts had not been inserted.

**MARGINAL
NOTES**

29. The marginal notes are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this lease nor in any way affect this lease. Words

of any gender in this lease shall be held to include any other gender and words in the singular number shall be held to include the plural when the sense requires.

**SUCCESSORS
AND ASSIGNS**

30. Except as otherwise provided herein, the terms and conditions of this lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, representatives, successors or assigns.

**QUIET
ENJOYMENT**

31. Upon paying the rent, additional rent and other sum or sums of money and charges as herein provided and upon performing all of the covenants, conditions and agreements aforesaid, on Tenant's part to be paid, observed and performed, Tenant shall and may peaceably and quietly have, hold and enjoy the demised premises for the term aforesaid, subject, however, to the terms of this lease.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in person or by a duly authorized officer.

WITNESSED BY:

D. J. Pearson

LANDLORD: CHRYSLER REALTY
CORPORATION

BY *S. H. Carlett, Jr.*

ITS VICE-PRESIDENT

SILVER
TENANT: CHRYSLER-PLYMOUTH, INC.

BY *Frank Silver*

ITS *President*

CORPORATE OWNED PROPERACKNOWLEDGMENT - LANDLORD BEING A CORPORATION

STATE OF MICHIGAN)

) ss:

COUNTY OF MACOMB)

BE IT REMEMBERED that on this 27th day of April 1968, before me, a Notary Public personally came as Vice-President of Chrysler Realty Corporation, Landlord herein, and acknowledged as such officer that he did sign the company's name to the foregoing instrument and that the signing of the same is the duly authorized and voluntary act and deed of said Company for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

SHIRLEY KRACHIE
Notary Public, Wayne County, Mich.
My Commission Expires Aug. 11, 1968

acting in Macomb

Shirley Krachie
Notary Public

My Commission expires: 8-11-68

TENANT - CORPORATE ACKNOWLEDGMENTSTATE OF New York)COUNTY OF Westchester) ss:

BE IT REMEMBERED that on this 26th day of April 1968, before me, a Notary Public personally came as Frank Silver of Frank Silver tenant herein, and acknowledged as such officer that he did sign the company's name to the foregoing instrument and that the signing of the same is the duly authorized and voluntary act and deed of said company for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

Maria F. Hoff
Notary Public

MARIA F. HOFF
Notary Public, State of New York
My Commission expires March 30, 1970
Qualified in Westchester
Commission expires March 30, 1970

EXHIBIT "A"

Beginning at a monument set on the northerly side of Nesconset Port Jefferson Station Road (CR 80)

Westerly, along the arc of a curve bearing to the right and having a radius of 3891.72 feet, a distance of 61.53 feet to a monument;

South 37 degrees 59 minutes 05 seconds West 537.64 feet to a monument:

RUNNING THENCE North 68 degrees 39 minutes 10 seconds West 87.69 feet to a monument set on the easterly side of Terryville Road;

RUNNING THENCE North 04 degrees 24 minutes 10 seconds East, along the easterly side of Terryville Road, 571.26 feet to land now or formerly of Jayne Associates;

RUNNING THENCE along said last mentioned land, the following two courses and distances;

(1) North 37 degrees 59 minutes 05 seconds East 86.83 feet to a monument;

(2) Easterly, along the arc of a curve bearing to the right and having a radius of 4291.72 feet, a distance of 280 feet in a southeast direction to the point of beginning - containing approx. 4.33 acres.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

COPY RECEIVED
Kelley Drye Warren Clark Carr & Ellis
BY *[Signature]* - 1:2:14
SEP 4 1973

SILVER CHRYSLER PLYMOUTH, INC.,

Plaintiff,

-against-

CHRYSLER MOTORS CORPORATION and
CHRYSLER REALTY CORPORATION,

Defendants.

ATTYS FOR _____

73 C 853 (J.B.W.)

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

ENTERED	
Diary.....	<i>[Signature]</i>
Register.....	<i>[Signature]</i>

DALE A. SCHREIBER, being duly sworn, deposes and says:

1. I am a member of the firm of Hammond & Schreiber, attorneys for plaintiff Silver Chrysler Plymouth, Inc. in this action based on a certain Dealer Relocation Agreement. This affidavit is submitted in opposition to defendants' motion to dismiss the complaint in this action because of the alleged disqualification of my firm, said to stem from my brief tenure as an associate at the predecessor of Kelley Drye Warren Clark Carr & Ellis, the firm representing the defendants in this action.

2. It is no trifling matter to be met with direct or indirect charges of improper professional conduct. However, as I will show in detail below, I believe that the charges, if the generalities proffered by defendants can be so characterized, are completely unfounded and probably actuated by ulterior motives. I feel compelled, as a matter of deep conviction, to resist efforts, such as defendants' here, by large firms on behalf of large clients to prevent, on the basis of vague generalities, former, subordinate associates from representing anyone against such firms' clients long

after such associates have departed from the firm.

3. Insofar as the charge of my actually using any confidential information from or about any Chrysler company is concerned, I categorically deny that I have had, used, or could use any such information in this case. In this regard, it should be pointed out that, despite its broad charges and sweeping generalities, Chrysler's moving affidavit fails to point to any specific confidential information about Chrysler that I have or might use in this case. Although it is difficult to prove a negative in the face of the unspecific charges made here, I can affirmatively state that, during my tenure at Kelley Drye, I received little, if any, information from or about Chrysler that could even be arguably considered confidential. Indeed, I believe that it was the policy of Chrysler and of the firm not to entrust confidential information to young associates, such as I was then.

4. Chrysler's moving affidavit has failed to specifically identify any case or matter, including those of public record, from which I may have received confidential information that could be used in this action. Below I will specify litigated Chrysler matters on which I worked at Kelley Drye and show that there is no relation, substantial or otherwise, between any of those matters and the present case. I did not work on Chrysler dealer litigation or anything remotely connected with the present case. Prior to our retention by the plaintiff, I had never even heard of a Dealer Relocation Agreement and had never seen a Chrysler dealer lease. I should finally point out that defendants' generalities are premised on vastly inflated notions of my stature and influence, as a junior associate at Kelley Drye, that certainly were neither acknowledged nor rewarded during my tenure there.

Employment Background

5. Since defendants attempt to create the impression of lengthy tenure at Kelley Drye and to accord me undeserved and certainly then unrecognized stature and influence, some background is in order.

6. Despite contrary assertions, I worked at Kelley Drye less than three years (Ehrenbard, pp. 2, 3)^{*/}. I graduated Columbia Law School in June 1965 and was hired by the predecessor of defendants' counsel, Kelley Drye Newhall Maginnes & Warren, as an associate, commencing September 1965, at the annual salary of \$7,800. However, in short order, I obtained a clerkship with soon to be United States District Judge Marvin E. Frankel. The clerkship started in November of 1965 and lasted until the end of August 1966. In November 1965, I left Kelley Drye without, I believe, an express written commitment for reemployment. In September 1966, I returned to Kelley Drye at an annual salary of less than \$10,000, and found myself, as all young associates at large firms, doing legal research. In 1967, during which I received \$11,270 in salary from Kelley Drye, I started doing research and some writing for partners, including Mr. Ehrenbard. I did legal research and wrote drafts of parts of briefs, which were often rewritten by partners, including Mr. Ehrenbard, and senior associates, on some Chrysler matters, as I will detail below. However, I cannot recall participating in any dealer case. I had only the rarest contact with Chrysler personnel, and I never met or spoke with Keith Jenkins, Esq., who was and, I believe, still is the Chrysler house counsel

^{*/} "Ehrenbard" refers to the moving affidavit of Robert Ehrenbard, Esq., sworn to August 25, 1973. In a separate section of this affidavit, I shall group together and refute all of the specific misstatements and exaggerations contained in defendants' moving affidavit.

on dealer matters. In fact, long prior to my departure from Kelley Drye in February 1969, most of my time was spent on preparing, under Mr. Ehrenbard's rigorous supervision, for trial a non-Chrysler case pending in the United States District Court for the Southern District of New York, entitled Fidelity & Casualty Company v. Alpha Life Insurance Company. Indeed, I extended my tenure several weeks to make sure that I had substantially finished my work on this case before leaving the firm and, after leaving, returned for one whole day, without pay, to review matters in that case with Mr. Ehrenbard.

7. In view of defendant's assertion that I "switched sides" by associating myself with Mr. Hammond in August 1970, almost eighteen months after leaving Kelley Drye (Ehrenbard, p. 5), my post-Kelley Drye employment bears mentioning. In February 1969 I opened my own practice in White Plains, New York far from New York City. I did not represent any automobile dealers there, and would not have had the slightest idea how to do so. Indeed, my principal case load was negligence cases, although I also handled some criminal cases. I did not join my partner, Mr. Hammond, until August 1970. Until that time, my awareness of automobile dealer litigation was most remote and useless to someone of Mr. Hammond's long experience in automobile dealer matters. His primary interest in hiring me was to obtain someone to do the day-to-day drudgery of litigation.

The Present Action

8. Although defendants have not established, as required by the cases, any relationship, no less a substantial one, between the present case and any matters that I worked on at Kelley Drye, I have, in view of the gravity of the implications of defendants'

claims, taken it upon myself affirmatively to demonstrate the lack of such relationship. I start with a summary of the present action.*

9. Filed on June 12, 1973, more than four years after my departure from Kelley Drye, the complaint in this action alleges that plaintiff dealer signed a so-called Dealer Relocation Agreement dated January 30, 1967, by which, in consideration of the plaintiff's promise to relocate his dealership facility and pay rent as stipulated, defendant Chrysler Motors Corporation ("Motors") would lease plaintiff a new facility to be erected by Motors (§13, 4). The standard form agreement contained a formula for computation of rent based on amortization of Motors' investment over a twenty-five year period. (§4.) An annexed form of lease agreement was not filled in. (§4). But as the rental formula makes clear, or at least implies, the term was to be twenty-five years (§14, 5). It is alleged that Motors' representatives represented to plaintiff and other dealers similarly situated that the Dealer Relocation Agreement was for a term of twenty-five years (§5). Thereafter, it is alleged, upon information and belief, that Motors' parent formed defendant Chrysler Realty Corporation ("Realty") and all of Motors' real estate functions were apparently assigned to, and assumed by, Realty (§13, 6). In 1968, Realty entered into a five year lease (hereinafter "Administrative Lease") with plaintiff (§9). However, Realty's and Motors' representatives represented to plaintiff dealer that the Administrative Lease was merely a working document under the Dealer Relocation Agreement and that at its expiration a new working lease form would be issued under the Relocation Agreement.

*/ I believe that clear delineation of plaintiff's claims in this case will also show that defendants' motion under Rule 12(b)(6), Fed.R.Civ.P., to dismiss the complaint for failure to state a claim for relief was merely designed to postpone answering the complaint.

10. Plaintiff seeks judgment declaring the Dealer Relocation Agreement to be in full force and effect for twenty-five years, damages for the amount of overpayments plaintiff has been forced to make since June 1, 1973 to avoid eviction and an injunction insuring quiet enjoyment of the facilities.

11. Plaintiff proceeds on three separate legal theories. The first two are premised on breach of the Dealer Relocation Agreement. The third, and obviously less important, theory under the Dealers' Day in Court Act is that defendants coerced plaintiff, by virtue of their dominant position as plaintiff's supplier and otherwise, to relinquish the benefits of the Dealer Relocation Agreement.

12. Despite defendants' Rule 12(b)(6) motion, which defendants seek to defer, the present case represents a substantial and important dealer claim. The Ehrenbard affidavit (p. 5) refers to a similar suit involving another dealer being handled by his firm. Annexed is a copy of an article from the June 15, 1973 issue of Automotive News, the leading automobile sales trade publication, showing that defendants settled a similar suit in Columbus, Ohio. The claims are substantially those made in this case and presumably were made without the benefit of confidential information from Chrysler. Apart from showing the obvious substantiality of plaintiff's claims, the pendency of such similar suits shows, as well, that the claim asserted here is not, and could not be, based on confidential information from Chrysler. The principal evidence is the Dealer Relocation Agreement, and the dealer's testimony about representations made to him and others by defendants' representatives about the provisions thereof.

13. By their Rule 12(b)(6) motion, defendants cautiously expose the substance of their defenses to this case. First, say defendants directly, the so-called Administrative Lease in effect can-

celled and superseded the Dealer Relocation Agreement. Second, intimate defendants, plaintiff's construction of the Dealer Relocation Agreement is unwarranted. Third, claim defendants, the Dealer Relocation Agreement that Motors drafted is too vague to be enforceable.

14. As will be shown below, while an associate, I did ~~not have the remotest~~ connection with any case raising any claim or theory asserted by plaintiff or any defense relied upon by defendant in this action. As the associate who handled dealer litigation during my tenure at Kelley Drye states in his affidavit, there was simply no case like the present case then in the firm. Although it is sometimes difficult to divine the opaque characterizations in the Ehrenbard affidavit, it appears defendants do concede that I never worked on a case or matter on behalf of Chrysler or any other client raising any of these claims or defenses and that I had no contact with any work done for Chrysler Realty Corporation or the Dealer Relocation Agreement which underlies plaintiff's claims.

Chrysler Cases I Worked
On at Kelley Drye

15. By use of broad and unsubstantiated characterizations, defendants have attempted to create some connection, however tenuous and inaccurate, between the present case and matters that I allegedly worked on at Kelley Drye. However, as becomes evident after wending one's way through the Ehrenbard affidavit, one looks in vain for specific references to an actual case that I allegedly worked on. Apparently anticipating this criticism, Mr. Ehrenbard (p. 4, footnote) contends that "to spell out in greater detail the nature and extent of Mr. Schreiber's [alleged] representation of Chrysler interest (sic) during his association with my firm" would "require me to set out the very contents of the [alleged] confidential

communications." The remark is plainly absurd and is contradicted many times by Mr. Ehrenbard's affidavit. On page 3, he alludes to "matters Mr. Schreiber worked on were several suits, like the present one, by automobile dealers against Chrysler and/or Motors." If such suits existed, they were a matter of public record. Why, then, does not Mr. Ehrenbard specifically identify them? Surely, not to protect alleged confidential communications by Chrysler to me. On page 4, he asserts that "at least one of those dealer suits worked on by Mr. Schreiber,*** were [sic] based, in whole or in part, upon claimed violations of the Dealers' Day in Court Act." What case? What was the claim? Surely, such information is a matter of public record. On page 4, he continues stating "[a]nother suit in which Mr. Schreiber was involved***related to real estate questions concerning a parcel of land upon which dealership facilities were located." The same questions apply here.

16. It is both astonishing and shocking to me that an established member of the bar can claim in an affidavit that a former associate of his firm has worked on several litigated cases, giving rise to an actual or threatened conflict of interest, and fail to identify one single such case. It would appear to me that at the very least a large firm claiming such impropriety should substantiate its claims with greater specificity than defendants' counsel has here. In effect, the moving affidavit proceeds on the assumption that I am under some obligation to refute charges not yet specifically made but insinuated through vague characterizations.

*/

It has occurred to me that defendants may be holding back on some details hoping to prevent plaintiff from making an adequate reply. If this occurs, we respectfully request an opportunity to reply, especially since professional integrity is at stake. In addition, we would request leave to examine Kelley Drye's records on my activities as to central points of factual contention, if any, and request a live hearing to resolve any material issues arising therefrom.

17. Despite the failure of defendants to make out anything close to a prima facie showing for disqualification, I will take it upon myself to list and briefly describe, to the best of my recollection, the few litigated matters I worked on for Chrysler while at Kelley Drye. Since these cases are matters of public record, I will not be disclosing even arguably confidential information.

18. The cases described below were the primary Chrysler matters I worked on while at Kelley Drye. This recital, I believe, contradicts the assertion made by Mr. Ehrenbard that "Mr. Schreiber devoted a great portion of his time working on dozens of matters, in litigation or otherwise, for Chrysler companies" (Ehrenbard, p. 3) (Emphasis added.)

(a) Checker v. Chrysler, 64 Civ. 866 (S.D.N.Y.): This was the primary Chrysler case that I worked on while at Kelley Drye. In this treble damage antitrust action commenced in 1964, Checker, a manufacturer of taxicabs competing with Chrysler principally in New York City, charged that, in violation of Section 1, of the Sherman Act, Chrysler conducted a predatory campaign to put Checker out of business as a seller of taxicabs. My participation in this case, which was not settled until after I left Kelley Drye, was limited to defense of a motion for summary judgment and, alternatively, for a preliminary injunction. The defense was based primarily on the insufficiency of Checker's proof and on publicly admitted facts about continuous losses generated by Checker in its manufacturing operations. Checker's motion was denied (283 F.Supp. 876). I assisted in the writing of the brief on the appeal therefrom decided in Chrysler's favor (405 F.2d 319). I had left the firm before briefs were submitted to the Supreme Court. Checker's petition for certiorari was denied (393 U.S. 999). This case

involved none of the issues involved in the present case. Indeed, Chrysler convinced both the District Court and Court of Appeals that the particular pricing rebate plan under attack there "operates without any participation by Chrysler dealers." (405 F. 2d at 321).

(b) Ezzes v. Ackerman: This shareholders derivative case was filed in the Delaware Chancery Court in 1966, during my clerkship with Judge Frankel. The Chancery Court dismissed the complaint on the grounds of res adjudicata and release. The dismissal was upheld on appeal. I assisted writing briefs on the appeal and a reply brief in the trial court. The Ezzes case clearly has no relationship to the present case.

(c) Abikkarm v. Chrysler: This was a \$2,000 warranty case in the Civil Court, New York County that was settled during a brief trial. I worked on this case only at the very end. Clearly this warranty case has no relationship to the present case.

(d) Chrysler Motors Corporation v. Toffany: This suit involved the pre-emptive provisions of the National Highway Safety Act. My participation was limited to legal research and brief writing on the issue of the applicability of the Eleventh Amendment of the United States Constitution to actions in federal courts enjoining state officials from enforcing state laws pre-empted by federal law. This suit clearly is unrelated to the present case.

19. In the many years that have passed since my departure from Kelley Drye, it is possible that I have forgotten a few of the minor Chrysler cases that I might have participated in peripherally. It is possible, for example, that I may have been questioned about an issue in a dealer case or even have researched a narrow legal issue in such a case. But until I am furnished with specific claims, it is difficult for me to recall details. In any event, I doubt

that my participation, if any, was meaningful in relationship to Kelley Drye's overall involvement in such cases. But I can be quite sure that I never participated in or had any knowledge of any case or matter at Kelley Drye remotely related to the issues in the present case.

20. Out of an excess of caution, I spoke with several former Kelley Drye associates who had worked on dealer litigation matters during my tenure at Kelley Drye, about what appeared to me to be inaccuracies and gross exaggerations in the Ehrenbard affidavit. I spoke to Hugh M. Baum, Esq., now an officer and counsel to J.M. Randolph & Associates, Inc., about a case whose name I could not remember about what I thought was a dealership facility. Mr. Baum, in his accompanying affidavit, clearly and unequivocally states that that case had nothing to do with the present case and that I did not participate in that case, which he handled. He also points out that his suit was by Chrysler Motors to compel specific performance of a contract to purchase vacant land. Clark J. Gurney, Esq., a partner of the firm of Roth, Carlson & Spengler, whom I see socially, submitted his affidavit in which he states that, during my tenure, he, Mr. Gurney, and not I, was the associate at Kelley Drye who worked on Chrysler dealer litigation. He states that I was not involved in dealer litigation and that there was no case at Kelley Drye during his tenure related to the subject matter of this case. He cites two minor instances in which I examined a tax return of a corporate plaintiff in a dealer suit and researched a statute of limitations issue. I believe that these two affidavits carefully cut through the web of generalities in the Ehrenbard affidavit.

Other Activities at Kelley Drye

21. Defendant's moving affidavit also attempts to create

the impression that I worked principally on Chrysler matters while at Kelley Drye. While I spent, for a time, a large amount of my time on the Checker case, I spent most of my other time on non-Chrysler cases. The almost 100 so-called massive central station protection treble damages actions, emanating from United States v. Grinell, 384 U.S. 563 (1964), occupied a great deal of my time. So did the Fidelity & Casualty case, previously alluded to. I handled matrimonial, derivative, securities, contract, and negligence litigation for non-Chrysler clients. In addition, I spent many hundred hours in the library writing research memoranda for other clients on mortgages, interstate commerce tariffs, trusts, estate taxes, community property, charitable foundations, sales of controlling interest in corporations, personal jurisdiction of New York and federal courts over defendants, the McCarren-Ferguson Act, the New York Public Service Law, tax exempt foundations, tax-free exchanges, the Uniform Commercial Code, and the Norris-LaGuardia Act.

Rebuttal to Inaccurate and Exaggerated
Statements Contained in the Ehrenbard
Affidavit

22. Although I believe that this affidavit and the accompanying affidavits amply refute any claim of substantial connection between the present case and my work at Kelley Drye, I do think it appropriate to specifically point out, and reply to, several inaccurate and exaggerated statements contained in the Ehrenbard affidavit.

- (a) "Mr. Schreiber's work for Chrysler from 1965-1969 may itself have influenced Chrysler policies and practices"
Ehrenbard, p. 5

This statement epitomizes the hyperbolic approach of the Ehrenbard affidavit. The impression sought to be conveyed was that

a young associate earning until 1968 less than \$10,000 per annum and poring over law books most of the time "influenced" the policies of one of the largest corporations in the world. This is hardly the type of acclaim I heard at salary time and it is preposterous on its face. Of course, the intimation of the child prodigy at work is qualified by a carefully inserted "may have". This licentious use of words is hardly the work of an objective and fair-minded reporter.

- (b) "Schreiber***was associated with my firm from 1965 until 1969" (Ehrenbard, p. 2); "Mr. Schreiber's work for Chrysler from 1965-1969" Ehrenbard, p. 5).

As shown earlier, I was actually employed by Kelley Drye for less than three years. The purpose of the exaggeration here is obvious.

- (c) "Yet Mr. Schreiber has seen fit to switch sides" (Ehrenbard, p. 5)

The circumstances of my joining with Mr. Hammond eighteen months after I left Kelley Drye have been explained. Suffice it to say I never met or spoke to Mr. Hammond while I was at Kelley Drye or had the slightest idea who he was. This is confirmed by the Gurney affidavit.

- (d) "While with this firm Mr. Schreiber became involved with real estate work on Motors' behalf, including matters of the type since transferred to Realty" (Ehrenbard, p. 2 (footnote))

This statement, to the best of my knowledge, is substantially, if not completely, false. I cannot recall any Chrysler real estate matter I worked on. The only Chrysler real estate matter I remember being in the office was the Estree case referred to in the accompanying affidavit of Hugh M. Baum, Esq. I did not participate in that case, which in any event was totally unrelated to the present case.

- (e) "Another suit in which Mr. Schreiber was involved***related to real estate questions concerning a parcel of land upon which dealership facilities were located"
(Ehrenbard, p. 4)

This statement must again refer to the Estree case. The phrase "was involved" is completely misleading, as shown by the Baum affidavit. Mr. Baum also states that the claim asserted by, not against, Chrysler Motors Corporation was based on an option to purchase vacant land, not a dealership facility. Again the use of language here sadly distorts reality.

- (f) "Among the matters Mr. Schreiber worked on were several suits***by automobile dealers against Chrysler and/or Motors"
Ehrenbard, p. 3)

This assertion is false. The accompanying affidavit of Clark J. Gurney, Esq. decisively shows that I was not involved with dealer litigation generally, as the above statement tries to imply. Mr. Gurney was the "dealer" associate during my tenure at Kelley Drye. A comparison of the many hundreds, if not thousands, of hours put in by Mr. Gurney on Chrysler dealer litigation, in contrast to whatever showing could be made about my alleged involvement in factory-dealer problems, reduces the above statement to a regrettable lack of candor.

- (g) "Indeed, at least one of those dealer suits worked on by Mr. Schreiber,***were based, in whole or part, upon claimed violation of the Dealers' Day in Court Act" (Ehrenbard, p. 4)

The unidentified suit referred to may be one of the two referred to in the Gurney affidavit. That affidavit amply refutes any claim that any such suit was related, substantially or otherwise, to the present action, and shows that I was not meaningfully involved in that suit.

- (h) "Mr. Schreiber worked on Chrysler's and Motor's behalf in defending a dealers'

suit in which Mr. Hammond represented
the dealer" (Ehrenbard, p. 5)

As shown in the Gurney affidavit, this statement is substantially, if not completely, false.

- (1) "Through daily contacts with defendants' employees and other attorneys and members of my staff" (Ehrenbard, p. 6)

This statement is either a truism, so obvious as not to require statement, or is cunningly misleading. I had "daily contacts" with employees of the Kelley Drye firm, when I was at work. This is obvious. But I did not, as I earlier stated, have contact with Chrysler employees "on a daily basis" or more than rarely. Those I dealt with were primarily service and sales personnel at Chrysler's New York City factory-owned, sales and service outlets on nickel-dime warranty claims. I never met an officer of either defendant in this case or Chrysler Corporation, the parent corporation, except a former general counsel in connection with Ezzes derivative suit in 1966. Needless to say, my conversation with him involved pleasantries. I never met or spoke with Keith Jenkins, Esq., who was and is the house counsel in charge of Chrysler dealer litigation or anyone in any way connected with Realty.

- (j) "he***must have in fact learned a great deal about***numerous Chrysler real estate matters" (Ehrenbard, p. 6)

As shown above and in the Baum affidavit, this statement is utterly false. An attempt is made to salvage this misstatement with the footnote "[a]part from the actuality of such learning, Mr. Schreiber is irrefutably presumed to have shared information with other attorneys in my firm." The implication here is that I, as a young associate, inveigled myself into the confidence of partners of the firm and drew from them confidential information about Chrysler or matters that I was not working on. The mere

statement is its own refutation, as is the absence of any affidavit from the partners from whom I allegedly inveigled such confidences.

- (k) "to all of which matters Mr. Schreiber had free and ready access during his association with us", referring to the "range" of Kelley Drye representations of Chrysler interests (Ehrenbard, p.3)

This statement conjures up the image of the associate rifling files in order to pilfer or ascertain confidential information about Chrysler, on matters outside of his assignments. The image is infantile in its fancy and libelous in its import. I should point out in this connection that, during my tenure, Kelley Drye had a central file room consisting of several thousand square feet, crammed with rows of files, and, as well, outside storage space that I never saw. It would take any person a lifetime to begin to sample their files. It cannot be presumed that a young associate had access to all of these files without straining reality unduly.

23. Building from the above factual premises, themselves built on misstatements, exaggerations and so-called dubious "presumptions", Mr. Ehrenbard offers his two vague conclusions:

- (a) "Mr. Schreiber acquired and gained access to a wealth of information about the practices and activities of the defendants herein" (Ehrenbard, p. 6); and
- (b) Schreiber "obtained immeasurable confidential information regarding practices, procedures, methods, of operation, activities, contemplated conduct, legal problems and litigations" of Chrysler Companies (Ehrenbard, p. 2).

The conclusion, as well as the premises from which it is deducted, is false. Despite the vague generalities, the Ehrenbard affidavit does not point to a single case substantially related to the present case.

Defendants' Ulterior Motives

24. I, for one, would find it difficult to explain defen-

dants' approach on this motion if I were merely to consider the deserved stature of the Kelley Drye firm and the manner in which reputable counsel characteristically conduct themselves. However, their willingness to stretch and bend, can be, and is probably, explained by their desire to eliminate, as a potential adversary counsel, my partner Mr. Hammond, who for many many years prior to the formation of our firm was one of the few able advocates in the United States for the automobile dealer.

25. I respectfully submit to the Court that the inferences defendants have attempted to erect from exaggerated and inaccurate premises noted above should be carefully weighed against defendants' obvious interest in eliminating Mr. Hammond. I doubt very seriously that either defendants, whose executives have no idea of who I am, or Mr. Ehrenbard, considers me a threat to Chrysler's interests.

Conclusion

26. In conclusion, I believe that there is no basis for disqualifying me, my firm or my partner in this case on the basis of my association with the Kelley Drye firm. A fair and objective view of my work, as a junior associate at Kelley Drye, will disclose that there is not any meaningful risk of my abusing any alleged confidences. Although the elimination of such abuse is of primary importance, this case raises an important policy issue about the specificity and quality of proof of such abuse. Surely, such abuse is not proved by its mere assertion or by the undocumented generalities offered here by defendants, when without risk of disclosing confidences fuller and more meaningful exposition can be made. We submit, as we will amplify in our brief, that a higher standard of proof than defendants have or can satisfy is necessary to balance the interests of giant corporate clients of large firms

71 a

and protecting professional opportunities of young lawyers who start their careers at large firms doing work for a multitude of large national corporations. In view of defendants' unique interest in eliminating Mr. Hammond's representation of dealers he has long served, the standard applicable should be elevated further. However, on whatever level the proof here is evaluated, defendants have simply not supported their claims. For the foregoing reasons, defendants' motion should be denied in all respects.

Walter G. Schubert

Sworn to before me

this 31st day of August, 1973.

Alexander Hammond

ALEXANDER HAMMOND
Notary Public, State of New York
No. 31-6750900
Qualified in New York County
Commission Expires March 30, 1974

Dealer countersuit against eviction hits lease plan

COLUMBUS, O.—A lease dispute has led to a \$1.25-million court action brought here by a Chrysler-Plymouth dealership against Chrysler Corp. and its real estate arm, Chrysler Realty Corp.

The action was filed by W. L. Swad and Bill Swad Chrysler-Plymouth Co. in answer to a suit brought in November by Chrysler Realty seeking to have the Swad enterprise evicted if it fails to meet terms of a new lease.

Swad alleges Chrysler Realty assumed the old lease from Chrysler and, without discussion, imposed terms of a new lease that were unacceptable to him.

Later, Chrysler refused to approve a nearby site on which Swad planned to relocate his dealership, he contends. Relocation requires the corporation's approval, which was denied, Swad maintains, because Chrysler felt the dealer would be paying more for the new facility than he would be paying under Chrysler Realty's proposed new lease.

Swad says the corporations are attempting to coerce him into accepting unilateral terms of the proposed lease. If he refuses, he will lose his franchise for lack of a facility, the suit sets forth.

The dealer asks a judgment of \$250,000 damages for emotional and mental distress, and \$1 million in punitive damages.

Ford honors Wicks

CLEVELAND.—Wick Lincoln-Mercury, Inc., has won Ford Motor Co.'s Distinguished Service Citation.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK----- x
SILVER CHRYSLER PLYMOUTH, INC.,
:Plaintiff,
:-against-
:CHRYSLER MOTORS CORPORATION and
CHRYSLER REALTY CORPORATION,
:Defendants.
:

73 C 853

(Judge Weinstein)

AFFIDAVIT

STATE OF NEW YORK)

COUNTY OF WESTCHESTER)

ss.:

CLARK J. GURNEY, being duly sworn, deposes and says:

1. I am a member of the law firm of Roth, Carlson and Spengler, 280 Park Avenue, New York, New York. From 1965 through June 1970, I was associated with the law firm of Kelley Drye Newhall Maginnes & Warren, predecessor of Kelley Drye Warren Clark Carr & Ellis (both hereinafter "Kelley Drye"), attorneys for the Chrysler defendants in this action. At the request of Dale A. Schreiber, Esq., who was associated with Kelley Drye during part of my tenure there, I am submitting this affidavit in connection with the defendants' motion to disqualify Mr. Schreiber's firm from representing the plaintiff in this case.

2. In the fall of 1965, after completing a judicial clerkship, I joined the Kelley Drye firm as a litigation associate. The litigation department at Kelley Drye then had four partners and about ten associates. Very soon thereafter, I began to work under Robert Ehrenbard, Esq., who was a litigation partner. In due course (I cannot be more specific without reviewing time records), Mr. Ehrenbard began assigning to me the bulk of Chrysler dealer

actions and I was responsible for the day-to-day handling of dealer actions under Mr. Ehrenbard's direct and rigorous supervision.

3. My acquaintance with Mr. Schreiber did not really begin until late 1966 or possibly early 1967. Although he was briefly an associate with Kelley Drye in the fall of 1965, that fall he became a law clerk to Judge Frankel. In the fall of 1966, he returned to Kelley Drye as an associate but, I believe, was not immediately involved in litigation matters.

4. Mr. Schreiber did some legal research for me on some matters. But, to the best of my knowledge and without the benefit of time records, I can state that he did not work directly or indirectly on Chrysler dealer litigation, with the possible exception of researching a few specific points of law that may have been assigned in a dealer case. The only specific occasion I remember is his research on the statute of limitations under New York contract law on a DeSoto discontinuance claim.

5. I do not remember any dealer case at Kelley Drye remotely resembling the present case, as it has been related to me by Mr. Schreiber. I do not recall any matter or case involving a dealer relocation agreement being in the firm during my tenure. Until speaking to Mr. Schreiber about this case, I had never seen or, to my best recollection, heard of a dealer relocation agreement.

6. I understand that Mr. Ehrenbard's affidavit states that Mr. Schreiber defended a case for Chrysler that his present partner, Mr. Hammond, prosecuted for the dealer. I believe this statement to be mistaken. The case Mr. Ehrenbard must be referring to is Long Island Motors, Inc. v. Chrysler Motors Corporation, because that is the only action Mr. Hammond brought that was defended by Kelley Drye during Mr. Schreiber's tenure. That action was

brought by Mr. Hammond in the United States District Court for the Southern District of New York, alleging principally that the defendants had violated the Robinson-Patman Act. The suit was instituted in November 1966, and was settled in November 1969. To my knowledge, Mr. Schreiber took no part in the defense of this suit; nor did he ever meet Mr. Hammond during the course of that case. I spent many hours dealing with Mr. Hammond on this matter, either alone or in the company of Mr. Ehrenbard, and many hundreds of hours on the case. I, not Mr. Schreiber, handled this action under Mr. Ehrenbard's supervision.

7. I believe that I am responsible for Mr. Schreiber's meeting Mr. Hammond, long after Mr. Schreiber left the employ of Kelley Drye in February 1969. In the fall of 1969, I advised Mr. Schreiber that Mr. Hammond might have a use for someone with his litigation background.

8. Mr. Schreiber asked me whether I could think of any Chrysler dealer action at Kelley Drye, which I worked on, that involved claims under the federal Dealers' Day in Court Act, and, if so, whether he had participated in any of them. I can think of only two actions involving such claims, while Mr. Schreiber was at the firm. There is no question, in my mind, that Mr. Schreiber did not work on these actions or have knowledge of the substance of what was involved. The first, entitled DiCarlo Dodge, Inc. v. Chrysler, was brought in the United States District Court for the Southern District of New York in 1967 or 1968. Under Mr. Ehrenbard's supervision, I drafted, together with another associate, practically all the papers in opposition to the plaintiff's motion for a preliminary injunction. I also deposed the plaintiff at length and conducted further discovery. Mr. Schreiber did not participate in the handling of the action or the drafting of papers. I do recall

76 a

asking Mr. Schreiber to analyze the corporate plaintiff's income return, because of his tax background, and it is conceivable that I may have, in passing, asked him about some matter of federal civil procedure. The only other Dealers' Day in Court Act case that I can now remember working on was Buono v. Chrysler, a case defended by Chrysler's New Jersey counsel. This case involved primarily a contract claim for wrongful discontinuance of DeSoto dealers. After the Third Circuit upheld liability (363 F.2d 43), I was asked by Mr. Ehrenbard to assist Chrysler's New Jersey counsel in this matter drafting briefs on the issues of damages. I do not recall that I spoke to Mr. Schreiber about this case, although I might have in passing.

Clark J. Gurney

Sworn to before me
this 3rd day of September, 1973.

David A. Schreiber

DAVID A. SCHREIBER
Notary Public in and for the State of New York
No. 00000000000000000000
Qualified in Westchester County
and in New York City
Commission Expires March 31, 1974

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x
SILVER CHRYSLER-PLYMOUTH, INC.,
Plaintiff,
-against- 73 C 853 (J.B.W.)
CHRYSLER MOTORS CORPORATION and
CHRYSLER REALTY CORPORATION, AFFIDAVIT
Defendants. :
----- x

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

HUGH M. BAUM, being duly sworn, deposes and says:

1. I am Secretary and Counsel to J.M. Randolph & Associates, Inc. I was associated with the firm of Kelley Drye Newhall Maginnes & Warren, the predecessor of Kelley Drye Warren Clark Carr & Ellis, attorneys for the defendants in this action. I submit this affidavit at the request of Dale A. Schreiber, in opposition to defendants' motion to disqualify his firm from representing the plaintiffs in this action and for other relief.

2. After completing my clerkship with the Hon. Thomas F. Croake, United States District Judge for the Southern District of New York, in 1967 I joined the Kelley Drye firm as an associate. I spent about a year doing almost exclusively research and then became one of about ten associates who worked primarily on litigation matters. From 1968 until ^{September 1969} 1970, I worked primarily under Robert Ehrenbard, Esq. ^{September 1969} In 1970, I left Kelley Drye.

3. Mr. Schreiber, whom I have not seen for years, called me at my home on the morning of August 28, 1973, and asked me if

I had any recollection about a case I worked on under Mr. Ehrenbard for Chrysler, involving an option to purchase real estate from a Chrysler dealer and whether he, Mr. Schreiber, had participated in this case. I recite the name of the case and the details outlined below. As will be seen, this was my case and Mr. Schreiber had nothing to do with it.

4. The name of the case was Chrysler Motors Corporation v. Estree Company and it was instituted in the Supreme Court, Westchester County, by Kelley Drye on behalf of Chrysler Motors Corporation ("Motors") against Estree Company which owned a lot located between two dealerships on the Boston Post Road in New Rochelle, New York. A Dodge ^{Chrysler and Plymouth} dealer in New Rochelle by the name of Crabtree was a partner or stockholder of Estree, which owned the lot. As I remember, Motors had an option to purchase the lot from Estree but ^{allegedly} failed to give notice of its intent to exercise the option in accordance with the precise letter of the option clause, ~~but had given notice of its intent to exercise the option in some other manner.~~ The sole issue in the case was whether Motors had properly exercised the option.

5. I did most of the drafting of the complaint and the papers filed in the Estree case. Although I was under the overall supervision of Mr. Ehrenbard, on this case, I worked primarily under Richard ^{J.} Concannon, Esq., then an associate and later a partner of Kelley Drye. I spent many hundred hours working on this ^{including negotiations.} case. With Mr. Concannon, I also spent many hours in settlement negotiations with Estree's attorney. At no time did Mr. Schreiber participate in the drafting of any papers in the case or even any internal memorandum relating to it ^{or in negotiations}. It is possible that over the extended period of time I was working on the Estree case that I may have asked Mr. Schreiber about a minor procedural matter,

79 a

although at this time I have no recollection of ever having consulted him about this case.

Hyth M. Baum

Sworn to before me September
this 14 day of August, 1973.

Dale G. Schuler

~~DALE A. SCHULER~~
~~Notary Public, State of New York~~
~~No. 60,000,000~~
~~Qualified in Westchester County~~
~~Certified to Term~~
~~Commission Expires~~

DALE A. SCHULER
Notary Public, State of New York
No. 60,000,000
Qualified in Westchester County
Certified in New York County
Commission Expires March 30, 1974

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----	x	
SILVER CHRYSLER PLYMOUTH, INC.,	:	
Plaintiff,	:	
-against-	:	73 C 853
CHRYSLER MOTORS CORPORATION and	:	(Judge Weinstein)
CHRYSLER REALTY CORPORATION,	:	
Defendants.	:	<u>AFFIDAVIT</u>
-----	x	

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss.:

ALEXANDER HAMMOND, being duly sworn, deposes and says:

1. I am a member of the firm of Hammond & Schreiber, attorneys for plaintiff in this action. This affidavit is submitted in reply to defendants' motion seeking disqualification of my partner Dale A. Schreiber, Esq., this firm and myself on the grounds that Mr. Schreiber received unspecified confidential information somehow bearing upon the issues presented by this case while he had been an associate, some years ago, of the predecessor of Kelley Drye Warren Clark Carr & Ellis ("Kelley Drye").

2. The motivation for this motion is a good deal more than the mere disqualification of Mr. Schreiber or this firm from representing the plaintiff in this one case. The obvious purpose is to disqualify and eliminate the deponent, Alexander Hammond, from representing any and all Chrysler, Plymouth and Dodge dealers in matters involving Chrysler Motors Corporation ("Chrysler"). I have specialized, since 1961, long before Mr. Schreiber's association with me in August 1970, in representing automobile dealers in actions against automobile manufacturers under the Automobile Dealer

Franchise Act and antitrust laws; and I have been uniquely successful in maintaining such actions and in aiding the development of the special body of law under the auto dealer statute. I follow all auto dealer affairs and litigation assiduously, and to my knowledge, no other attorney in the United States has specialized in this endeavor. The affidavit presented by Chrysler, intertwining fact, misstatements and exaggeration, can be understood only in the light of the great interest Chrysler has in eliminating me as an effective and successful dealer legal advocate.

My Career As A Dealer Advocate

3. Defendants' motivation to eliminate me as a lawyer successfully representing Chrysler Corporation dealers can only be understood by a full exposition of my special background as a lawyer in this field and of my prior experience in business as a new car dealer. Since 1968 I have been chairman of and the principal lecturer in the annual program entitled "Business and Legal Problems of Auto Dealers", sponsored by the Practicing Law Institute. Apart from chairing the programs and appearing on the panels, I have delivered as many as four separate lectures in the two-day programs. I have also participated as a lecturer in approximately ten other Practicing Law Institute programs involving dealer and franchise law. In 1969, an undated press release from the Practicing Law Institute announcing the second Automobile Dealer Program stated: "Alexander Hammond, of the New York Bar and the foremost specialist in the field of plaintiff franchisee antitrust law, will chair the program." (Ex. A, p. 2).

4. The special press serving the automobile industry has on occasions too numerous to enumerate recognized and characterized my expertise among lawyers in this narrow field. For example, the

Car Dealer Newsletter on November 18, 1968, said, in announcing the first Practising Law Institute Auto Dealer Program, that I was "acknowledged as the foremost dealer antitrust attorney" (Ex. B). In a two page article, the authoritative Automotive News on April 9, 1973 had a special article about me headlined by "Leading franchise lawyer takes a look at the future of auto sales agreements." (Ex. C). The article mentioned my role in negotiating and drafting for the first time in the automobile industry a uniquely fair and equitable sales agreement on behalf of the Volvo dealers.

5. By reason of my special business experience and background, since 1961 I have been completely involved in and thoroughly committed to representing those dealers who have been unfairly treated or terminated by their factories. My success in representing dealers has been based on my first-hand, thorough and continuing knowledge of the retail automobile business. I have kept myself informed of all aspects of dealer and factory problems by reading carefully the two weekly automotive publications and by counselling with dealers. My relationship with the automobile business began early in my youth and continued while I was attending Columbia Law School. After my graduation in 1939, I divided my time between the law and auto business. Starting in early 1950 I became associated with an Oldsmobile dealership in New York City. From early January of 1955 to June of 1959, I was president of Hammond Ford, Inc. a large dealership operating in the Bronx, New York.

6. Following the institution in 1961 of an action, Hammond Ford, Inc. v. Ford Motor Co., I returned to the practice of the law and represented a large number of automobile dealers in matters involving termination or unfair treatment under the Auto Dealer Franchise Act (15 U.S.C. §1221-1225) and the antitrust laws. My commitment to representing dealers who had been unfairly treated,

was, until around 1965, based substantially on idealistic considerations. Although I had achieved successful results for my clients in some protracted cases, there had been practically no success until 1969 obtained by dealers and their attorneys under the Dealer Act in well over a thousand cases filed by them since the enactment of the Act in 1956. Unlike other lawyers, I was able to successfully maintain actions against the manufacturers because of my thorough knowledge of the business details involved in the day-to-day operations of a dealership and because of my willingness to resist and survive expensive, protracted and burdensome pre-trial proceedings on essentially contingent fee arrangements with my clients. Other lawyers and their dealer clients were not as committed.

7. Professor Stewart Macaulay, in a 377 page study of Auto Dealer Franchises in the 1965 Wisconsin Law Review, pp. 481-857, said after analyzing with specificity the cases filed under the Dealer Act:

"The most impressive thing is that the dealers have been highly unsuccessful in recovering money from manufacturers as a result of filing complaints under this act." (p. 749)

"This information allows us to guess that those dealers who sued view the Dealers' Day in Court Act as totally ineffective -- the statute produced little tangible benefit for most of them." (p. 750).

8. I believe that I have contributed to changing the direction of the case law in favor of dealers under the Dealers' Act by the Practicing Law Programs, by my cases and by consultations with other lawyers in cases brought by them. Since 1969 many favorable opinions have been rendered on behalf of dealers, and the Dealers' Act now has some meaning.

9. My firm now represents, and I had represented for some years prior to Mr. Schreiber's coming with me, an association of dealers which was once known as the Independent Dodge Chrysler Dealer Association and is now known as the Independent Dealer Committee Dedicated to Action. The great majority of the dealers belonging to this association are Chrysler dealers.

10. I have appeared as a dealer spokesman before Congressional Committees and the F.T.C. on numerous occasions. For example, I was invited to be the opening panelist in an all-day session on July 9, 1969 at the "Hearings before the Subcommittee on Monopoly of the Select Committee on Small Business of the U.S. Senate, Ninety-First Congress, First Session," on "The Role of Giant Corporations in the American and World Economies, Part 1, Automobile Industry - 1969." My statement and part of the colloquy is found at pages 18 through 32 of the records of these hearings. I was critical in my statement of Chrysler's large-scale entry into the retail automobile business and the predatory practices engaged in by their wholly-owned or controlled dealerships. I believe that because of my knowledge of the law and business in this area and the likelihood of litigation, Chrysler has engaged less in these activities in the New York area than in other metropolitan areas of the United States.

11. In 1968, long before I had ever heard of or met Mr. Schreiber, one of my lectures for the Practising Law Institute program on "Factory Competition and Dual Distribution" dealt quite extensively with the retail sales practices of Chrysler and the cases involving them. I was told in 1969 by an associate of Kelley Drye that Keith Jenkins, Esq., who is Chrysler's house counsel in charge of dealer matters and who attended the Practising Law Institute program, regarded me as the most dangerous lawyer in the country.

12. As a practical matter, it is very difficult for automobile dealers to find knowledgeable lawyers to represent them in dealer actions against their factories. I know of few, if any, lawyers in the United States who are knowledgeable in this special field and who would take such an action on a contingent fee basis, as I and our firm have done.

Other Ulterior Motives for the Motion

13. Chrysler has another obvious motive in bringing its motion. Chrysler is trying to wear down plaintiff's counsel and thereby force plaintiff to settle its claim. As dealers and their attorneys have found, legal techniques, devices and mechanisms can be and are used by a large litigant to wear down and smother a small plaintiff. Furthermore, there is a great and continuing need for an automobile manufacturer to avoid adverse legal precedents which might weaken its ability to keep its dealers under control. It cannot be doubted that Chrysler and others have the financial ability and willingness to engage in protracted and expensive legal proceedings to accomplish these ends.

Chrysler's Retention of Law Firms
Throughout the United States and
So-Called Confidential Information

14. The potential consequences of Chrysler's motion in disabling lawyers throughout the United States from representing persons with claims against Chrysler and its controlled companies should be considered, as well as the resultant impact upon the ability of associates of large firms to find new professional associations. As a result of specializing in dealer matters on a national basis, I have had the opportunity to observe that Chrysler and its subsidiaries, including its wholly-owned finance company,

retain attorneys in all or almost all of the larger cities or areas of the United States. The number of actions brought by the many millions of purchasers on Chrysler cars on warranty claims and product defects is staggering. From Chrysler's statements filed with the SEC and otherwise, I believe Chrysler owns or leases over 600 large dealership facilities, and by way of stock ownership or other special financial arrangements controls or dominates possibly 500 to 750 dealerships. I would estimate on the basis of my experience that Chrysler, its subsidiaries, and its owned or controlled dealerships may have retained from 500 to 1,000 law firms since 1960. Chrysler and its subsidiaries also employ large legal staffs. I believe that Chrysler has retained more than five law firms in New York City alone. Conceivably and in all probability, the number of lawyers associated with these firms for some period of time since 1960 might approximate ten thousand, and many of these lawyers have had some general contact with Chrysler, its related companies and dealer matters. Since associates are continuously coming and going in some law firms, it would not serve the public interest to disable them from representing clients when they had some peripheral contact with the affairs of our giant corporate enterprises.

15. From my direct experience with Chrysler staff lawyers and with lawyers in firms representing Chrysler, I have found that lawyers in outside law firms, unlike internal staff, receive and necessarily receive little, if any, so-called confidential information and that such information as they do receive is ultimately made a matter of public record. The company chain of command for the transmission of so-called confidential information may be a long one, and it is obvious that subordinate employees in the corporation or in the outside law firms are simply not trusted with

truly confidential information. To the extent that 1,000 or indeed possibly 5,000 lawyers in other firms in the United States may have received some information about or from Chrysler, I do not see, except under the rarest circumstances, how such information could aid a plaintiff dealer in a law suit, since all relevant information might be in the record or could be obtained by discovery. From my knowledge of Chrysler and its law firms, I fully believe that the general statements that Mr. Schreiber received confidential information relating to this case or any other matter (except conceivably with respect to taxi rebates) is a contrived conclusory statement and is certainly not based on any facts specified in the supporting affidavit.

My Initial Relationship with Mr. Schreiber

16. Although I spent more than 500 hours from November 1966 to November 1969 litigating a dealer case against Chrysler represented by Kelley Drye (Long Island Motors, Inc. v. Chrysler Motors Corporation) and had also discussed other specific dealer problems with them, I never heard of or met with Mr. Schreiber until the fall of 1969, sometime well after he left that firm. I initially took him on in 1970 to do much of the chores of litigation. I expected and found that he knew nothing, or practically nothing, about automobile dealers and their relations with Chrysler or other manufacturers. He has since become familiar with some of these matters through me, our clients, trade journals, the Practising Law Institute programs and the reading of cases and articles. I believe that one of the last things in the world that concerns Chrysler is the possibility that Mr. Schreiber or other lowly associates might have been given some form of confidential information that could be injurious to it in later dealer litigation.

How Plaintiff Retained My Firm

17. Mr. Frank Silver, President of plaintiff, came to me because of my reputation and because he knew that I was counsel to the Independent Dodge Chrysler Dealer Association. We have known each other from around 1958 when I was a Ford dealer and he was a nearby Dodge dealer. I bought a car from Mr. Silver's present dealership for my son-in-law 1969. Mr. Silver had never met or spoken to Mr. Schreiber until he retained this firm in 1973.

We Have Scrupulously Observed The Canons of Ethics

18. We have scrupulously observed the Canons of Ethics where there was any possible doubt and have made substantial economic sacrifices to do so. During his employment as an associate with Kelley Drye, Mr. Schreiber did work on one case involving the granting by Chrysler of discount rebates to taxi purchasers. In United States v. General Motors Corp. and Ford Motor Co., Criminal No. 47-140, General Motors Corp. and Ford Motor Co. were indicted in an action filed in Detroit, Michigan, relating to the illegal withdrawal of fleet and lease rebates. In a front-page story appearing in the New York Times, Chrysler was named in a bill of particulars in this case as being involved; and Chrysler has been named as one of the defendants in civil suits brought by private parties. Although at least ten past or prospective clients, who as dealers were also engaged in the leasing business, requested that I institute a suit on their behalf against Ford or General Motors, I felt that our firm did not want to bring an individual or class action against either of these companies because of Chrysler's involvement. Our firm has been highly successful in class actions, but we declined these attractive cases because of possible remote ethical considerations.

19. Defendants' motion is based on spurious factual claims.

Defendant has failed to show that there was any information, confidential or otherwise, received by Mr. Schreiber that relates to this case. Our firm has acted with due regard to the highest ethical considerations and this motions should be denied.

Alexandra Hammons

Sworn to before me

this 31st day of August, 1973.

Dale A. Schreiber

DALE A. SCHREIBER
Notary Public, State of New York
No. 60-8818325
Qualified in Westchester County
Certified in New York County
Commission Expires March 30, 1974

INTERNATIONAL ASSOCIATION OF
AUTO DEALERS

**Practising Law Institute,
1133 Avenue of the Americas
New York, N. Y. 10036 212-765-5700**

For Additional Information Contact:

Stephen A. Glasser

FOR IMMEDIATE RELEASE

The nation's more than 28,000 auto dealers are the sales and repair arm of America's largest industry. They are also major business forces in their own communities, representing an average net worth of almost \$150,000 each.

Today, among these auto dealers there is an outright rebellion against direct factory participation in various forms of retailing such as auctions, diagnostic centers, the building of possibly thousands of factory owned facilities, the substantial financing by the factory of many dealerships, and the granting of subsidies to fleet, lease and rental companies. Many dealers fear that the franchise system, itself, is threatened and that the factory in the near future will take over retailing in the large metropolitan areas.

New dealer organizations which are actively seeking to remedy many of these abuses of power on the part of the factory have sprung up throughout the country. And recently, significant victories have been won by dealers in landmark decisions by the courts which afford the dealer protection under the Good Faith Act.

MORE

EXHIBIT A

To acquaint the dealer and his lawyer with the nature of the legal conflicts and the developing body of law which controls the relations between the dealer and his factory, the Practising Law Institute, a non-profit educational institute, will present a program on the Business and Legal Problems of Automobile Dealers. The two day session will be held December 5-6, 1969, at the Plaza Hotel, Miami Beach, ~~and~~ February 6-7, 1970, at the Essex House, New York City.

The topics to be covered at the program will include: the Good Faith Cases - developing law; sales agreements from the standpoint of the dealer; sales agreements from the standpoint of the manufacturer; current controversial problems between dealer and factory; sales contract termination problems and conduct of litigation; warranties and tying practices; factory competition and "preferred customers"; wage and labor problems; and the increasing role of factory controls. Of special interest to automobile attorneys will be the lecture by Judge Hubert L. Will who decided the landmark good faith case, *Madsen v. Chrysler*.

Alexander Hammond, of the New York Bar and the foremost specialist in the field of plaintiff franchisee antitrust law, will chair the program. Faculty members will be: David Boies, Jr., of Cravath, Swaine & Moore, New York City, and instructor at New York University School of Law; Raphael Cohen, chairman of the executive committee of the Metropolitan Independent Dodge-Chrysler Dealer Association, New York; Harry Kemker, Fowler, White, Collins, Gillen, Humkey, and Trenam, Tampa, Fla., who has frequently worked and spoken in

MORE

the field of automobile franchise problems.

And Myron Krotinger, of Lane, Krotinger, Santora & Stone, Cleveland, who represents a number of automobile dealerships in the Cleveland area; Joseph R. Parauda, of Putney, Twombly, Hall & Hirson, New York City, who represents the Greater New York-Long Island-Westchester Automobile Association; Nicholas R. Weiskopf, Associate-in-Law, Columbia Law School; and Hon. Hubert L. Will, U.S. District Court, N.D. Illinois.

For further information contact the Practising Law Institute, 1133 Avenue of the Americas, New York, New York 10036; telephone (212) 765-5700

33 d

BUSINESS AND LEGAL PROBLEMS OF AUTOMOBILE DEALERS
December 5-6, 1969, Miami Beach, Plaza Hotel
(formerly Hilton Plaza)
February 6-7, 1970, New York City, Essex House

Program:

Friday - Morning Session
9:30 a.m. - 12:30 p.m.

The Good Faith Cases - Developing Law (Nicholas Weiskopf)
A Landmark Good Faith Case - Madsen V. Chrysler (Judge Hubert L. Will)
Sales Agreements From the Standpoint of the Dealer (Harry Kemker)
Sales Agreements From the Standpoint of the Manufacturer
(David Boies, Jr.)

Friday - Afternoon Session
2:00 p.m. - 5:15 p.m.

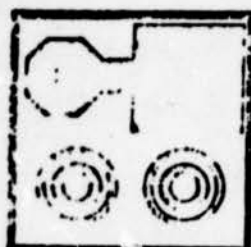
Current Controversial Problems Between Dealer and Factory
(Raphael Cohen)
Sales Contract Termination Problems and Conduct of Litigation
(Alexander Hammond)
Panel Discussion and Audience Questions

Saturday - Morning Session
9:30 a.m. - 12:00 noon

Warranties and Tying Practices (Myron Krottinger)
Factory Competition, Dual Distribution and "Preferred Customers"
(Alexander Hammond)

Saturday - Afternoon Session
1:30 p.m. - 5:30 p.m.

Wage and Labor Problems (Joseph R. Parauda)
The Increasing Role of Factory Controls (Alexander Hammond)
Panel Discussion and Audience Reaction



CAR
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CAR DEALER NEWSLETTER/2315 BROADWAY/NEW YORK/NEW YORK 10024/TEL: (212) 673-3110

Vol. III, No. 6

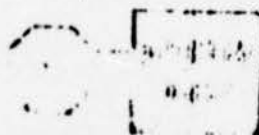
November 18, 1968

page -4-

PRACTICING LAW INSTITUTE ANNOUNCES LEGAL PROBLEM SEMINAR: The Practicing Law Institute has announced a two-day seminar which is titled: "Automobile Dealer Business and Legal Problems." This seminar, we are told, is aimed at both the dealer and his attorney. Some of the questions to be answered include: How good is the "Good Faith Act"? How can a dealer challenge termination of his franchise? What are the permissible limits of factory control of a dealership? What is the role of the "good faith customer"? What unique wage and hour provisions affect automobile dealers? What are the new legal pitfalls in automobile financing? To what extent can a manufacturer compete with its franchisee? What are the legal restrictions on factory tie-in? What is the potential effect of pending federal legislation on automobile franchise operations?

THERE ARE SEVEN practicing attorneys and a professor of the University of Wisconsin Law School who will be the speakers at this two-day seminar. Every individual is uniquely qualified to discuss one of these problems. For instance, Arthur Hamilton, acknowledged as the foremost dealer anti-trust attorney, will discuss "Contract Termination Problems and Conduct of Litigation," while Harry Kemmer, who worked on the NADA Franchise bill which became the well-known Eastland Bill, is speaking on the subject "Prospective Legislation."

THE PROGRAM COSTS \$125, and interested dealers should contact the Practicing Law Institute at 20 Vesey Street, New York, N. Y. 10007. Three seminars are planned. One for New York, December 6-7, one for New Orleans, January 15-16, and one for Las Vegas, January 30-February 1, 1969.



NEW YORK STATE ACCIDENT STUDY: There is a real time bomb in the works. Not too long ago, New York State provided some funds for the construction of a safety vehicle. As a side effect of this effort, the state amassed, on its computer, a tremendous amount of information relative to the propensity of certain vehicles to end up in serious accidents. The information was roughly categorized and was enough to pique the interest of the Department of Transportation in Washington, from when a fund was appropriated for a full-scale computer study of these statistics. The Newsletter has learned from sources close to the study that it will not only be revealing, but shocking. Because the appropriation for the study came out of the 1968-69 budget, the study will be finished no later than July 1, 1969. If and when it is released, and the political realities of the situation must be considered, we were told the "small import will have a very rough time of it." It was admitted there are many variables in the report, and it must be read very carefully, but if one is to judge from past performance, someone will make political capital with the report. Can Nader be depended upon to once more unveil a sensitive report that a Washington agency is privy to, but unwilling to release because of its loaded nature?

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EXHIBIT B

dimension

Leading franchise lawyer takes a look at the future of auto sales agreements

By Bob Fendell
Staff Correspondent

NEW YORK.—Important changes are coming in auto dealer sales franchises despite the immense bargaining power of the manufacturers.

Authority for that statement is Alexander Hammond, of Hammond & Schreiber, a former Ford dealer and attorney for the Volvo Dealer Council in the negotiations which resulted in the first franchise recognition of the monetary value of dealer good will.

Hammond also represented the 87 Eastern Toyota dealers who won concessions from Toyota in the Sunrise Toyota case. A leading authority on franchise law, he has given more than 1,000 lectures before fellow lawyers at the Practising Law Institute and elsewhere.

Hammond is currently reviewing all sales agreements in the auto field prior to submitting a model contract to the Independent Dealer Committee Dedicated to Action (formerly the Independent Dodge Chrysler Dealers Assn.).

Starting point was the Volvo agreement which Hammond believes will affect all future auto parts. He says the way is now paved for "bilateral instead of unilateral franchise agreements."

Franchise language a barrier?

While he himself is steeped in the language of current auto dealer sales agreements, he contends that the hope of writing fairer contracts is with lawyers unwedded to the franchise language.

"Tom Dieterich of Shearman & Sterling, representing Volvo, is a great at-

than the long-term profit, adding further incentive to this thinking.

"Actually the financial health of the dealer and the car maker depend upon long-range policy. Both realize more profit by building good will. And most extra sales and that fast buck come at the expense of future sales."

For the long view

• For a franchise agreement to take the long view, thus inspiring fairness to company and dealer alike, Hammond says it must contain these ingredients:

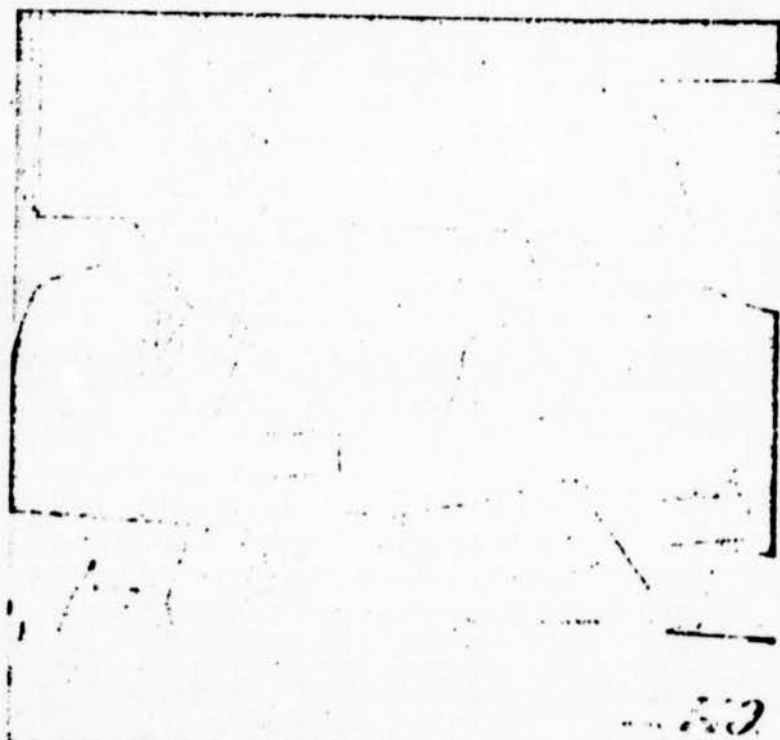
1. It must be negotiated with legal counsel abetting the dealer.
2. The manufacturer must agree "to act fairly and equitably."
3. The "burden of proof" in all disputes, especially termination proceedings, must rest with the manufacturer who has the records and resources on hand to establish its point of view.
4. Non-subjective standards and outside tests should be stipulated whenever possible rather than using the opinion of factory personnel.

Hammond noted that such components are commonplace in the office-machine and soft-drink industries. (He negotiated contracts in those industries.)

Comparing agreements

• Comparing the Volvo pact with those of the Big Three, therefore, Hammond notes the following:

1. No other franchise agreement in the industry has been arrived at "in fair negotiation between the manufacturer or importer and the dealer."
2. No other franchise agreement de-



Hammond aids Volvo dealers

A former dealer as well as an attorney, Alexander Hammond (left) is shown here at the signing of the new Volvo sales agreement which broke new ground in recognizing good will as a dealer asset. Right is Bjorn Ahlstrom, president, Volvo of America Corp. Hammond served as attorney for the Volvo Dealer Council.

By Charlie Cates
Staff Correspondent

DALLAS.—Visiting here with newsmen, Thomas A. Murphy gave a revealing insight the other day into how he faced the challenge of being catapulted into the position of vice-chairman of General Motors.

"It was humbling for me to suddenly

ways do as good a job at getting our message across as we'd like. Being as big and as successful as we are, we're a pretty good target for anyone who has a gripe. And the news media seems to do a good job of helping those people along.

"But General Motors is a people organization," Murphy continued. "We are

franchise recognition of the monetary value of dealer good will.

Hammond also represented the 87 Eastern Toyota dealers who won concessions from Toyota in the Sunrise Toyota case. A leading authority on franchise law, he has given more than 1,000 lectures before fellow lawyers at the Practising Law Institute and elsewhere.

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Starting point was the Volvo agreement which Hammond believes will affect all future auto parts. He says the way is now paved for "bilateral instead of unilateral franchise agreements."

Franchise language a barrier?

While he himself is steeped in the language of current auto dealer sales agreements, he contends that the hope of writing fairer contracts is with lawyers unwedded to the franchise language.

"Tom Dieterich of Shearman & Sterling, representing Volvo, is a great attorney, one of the finest I ever have met," Hammond says. "He has a grasp of what truly is important to his client, but, since he is not steeped in the company house-counsel tradition, he negotiated a fair contract. Within the context of the automobile industry this is precedent-making because auto franchises are usually so one-sided they become arbitrary weapons for the factory to kill the dealer."

Yet even before the Volvo pact, Hammond believes the pendulum already had begun to swing slowly away from his own description. He credits General Motors for beginning to perceive that "it needs the good will of the dealer as well as of the dealer's customer." But, nevertheless, he notes that the GM contracts also were drawn unilaterally without legal representation for the dealer.

The basic problem of why franchise agreements in the auto industry are "less fair" than some other franchise endeavors goes back to the business philosophy of the firms concerned, Hammond claims.

"In many businesses — not just the auto industry — there is too much emphasis on the need for a present profit enabling executives at all levels to keep their jobs and to exercise stock options," Hammond said. "Stock prices, of course, are oriented to the short term rather

long view, thus inspiring fairness to company and dealer alike, Hammond says it must contain these ingredients:

1. It must be negotiated with legal counsel abetting the dealer.
2. The manufacturer must agree "to act fairly and equitably."
3. The "burden of proof" in all disputes, especially termination proceedings, must rest with the manufacturer who has the records and resources on hand to establish its point of view.
4. Non-subjective standards and outside tests should be stipulated whenever possible rather than using the opinion of factory personnel.

Hammond noted that such components are commonplace in the office-machine and soft-drink industries. (He negotiated contracts in those industries.)

Comparing agreements

Comparing the Volvo pact with those of the Big Three, therefore, Hammond notes the following:

1. No other franchise agreement in the industry has been arrived at "in fair negotiation between the manufacturer or importer and the dealer."
2. No other franchise agreement declares expressly that the manufacturer has a duty to "act fairly, equitably and ethically" toward its dealers. (In fact, it should be noted that the Ford contracts have written into them what, on its face, seems an attempt to limit dealer rights under the Good Faith Act, viz. "[...] such request, advice, notice, termination or nonrenewal of the dealer shall not be considered to be evidence of coercion, intimidation or threat thereof [...] to be not in good faith. (17h-2).")

As an example of the companies' "overreaching attitude," Hammond stated that in all of the Big Three sales agreements, conviction of a law violation or disagreement among principals or officers would be cause for automatic termination if "in the opinion of" company representatives, such circumstances "may" adversely affect the dealership or the company. (He says the key words in all the Big Three contracts are "in the opinion of" and "may".)

"It is thus conceivable," he said, "that if the officers of a dealership had a loud political argument or one were convicted of a drunk driving charge and GM brass, for instance, felt either case hurt dealership good will, they could try to terminate under this clause. This is another of the examples where the tradi-

Continued on Page 30, Col. 3

Hammond aids Volvo dealers

A former dealer as well as an attorney, Alexander Hammond (left) is shown here at the signing of the new Volvo sales agreement which broke new ground in recognizing good will as a dealer asset. Right is Bjorn Ahlstrom, president, Volvo of America Corp. Hammond served as attorney for the Volvo Dealer Council.

Hammond aids Volvo dealers

By Charlie Cates
Staff Correspondent

DALLAS.—Visiting here with newsmen, Thomas A. Murphy gave a revealing insight the other day into how he faced the challenge of being catapulted into the position of vice-chairman of General Motors.

"It was humbling for me to suddenly be on the operating side," said the executive, who has been in finance for most of his GM career.

For 21 months prior to his elevation to vice-chairman, he had had charge of the car and truck group operations and had not even served as a director. Murphy, 57, was elected vice-chairman in December, 1971.

In replying to a question, Murphy conceded that the promotion was a pleasant surprise. "Yes," he said, "but then I looked at the responsibilities. I decided to roll up my sleeves and see what I could do."

In fielding the reporters' questions, Murphy answered one on the public's attitude toward GM thus: "I wish I really knew what the public thinks of General Motors."

"We try hard to get our position across, and I think the majority of people respect and understand GM. We must be doing something right. We're selling a lot of cars."

"But," he added, "I'm not sure we al-

ways do as good a job at getting our message across as we'd like. Being as big and as successful as we are, we're a pretty good target for anyone who has a gripe. And the news media seems to do a good job of helping those people along.

"But General Motors is a people organization," Murphy continued. "We are dependent on the people who work for us and the people who buy our cars. And we want to contribute to the well being of both — while trying, too, to make money for our stockholders."

Murphy, continued: "But no matter what field we are in, I believe we at General Motors try to understand the general business. I think we all are mindful of the general picture."

"And I believe that one of the great things about our organization is that everyone is convinced his area is the most important of all. In that way, everyone does his best job. Mine having been in finance, I think that is most important."

He added that "if the general managers of the various divisions could get the job done with me hanging around their necks then certainly they know how to do it. Each one is working mighty hard to beat the other."

Then Murphy translated his own attitude toward General Motors in the light of his experiences as an employee since 1938:

"This organization has tremendous integrity. I have never been asked to do anything that I couldn't explain to my mother, or anyone else. This is the reason for the success we've had and why we'll always have it."



Thomas A. Murphy

A look at future franchises

Continued from Page 20

tion of overreaching in every word to gain every edge for the factory shows through."

3. The Volvo agreement legally binds the parties to impartial arbitration before an American Arbitration Assn. professional located in the dealer's area. Moreover, the burden of proof is borne by Volvo, and if the dealer loses before the arbitrator, he retains the legal right to go to court.

The Chrysler agreement, which hasn't had a major overhaul in more than 15 years, never even mentions the possi-

bility of arbitration, Hammond says. In the case of GM's plan, the arbitrator now travels to the dealer in some cases instead of forcing the dealer and all his witnesses to come to Kansas City at great expense. GM still pays the arbitrator's salary and expenses, he points out, and conceived the rules without input from dealer lawyers.

The wording of the Ford-Lincoln-Mercury agreement expressly states that the company can at any time terminate its Arbitration Plan, viz. "The Company reserves the right to terminate, change or modify the Arbitration Plan at any time upon notice to the dealer . . ." (18a). [Other lawyers have pointed out that to get to arbitration the dealer must sign away his right to litigate in the courts. They say that this may be illegal but no one has tested it.]

4. Considering the distribution woes of the early part of the current model year, perhaps the most timely point in the Volvo pact, according to Hammond, is a clause which states that if cars are in short supply, they will be allocated on a fair, equitable and non-discriminatory basis.

Hammond declared there were other places where the Big Three contracts come off second best but that he believed he had made his points, that is, an agreement written by other than internal company counsel via negotiation would be vastly more fair and thus more favorable to dealers.



out to pass a Toyota pickup in the Mini 400.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x
SILVER CHRYSLER PLYMOUTH, INC.,
:

Plaintiff, :

-against- :

73 C 853 (J.B.W.)

CHRYSLER MOTORS CORPORATION and
CHRYSLER REALTY CORPORATION, :

Defendants. :

AFFIDAVIT

----- x
STATE OF NEW YORK)

COUNTY OF NASSAU)

ss.:

HAROLD REESE, SR. , being duly sworn, deposes and
says:

1. I am a franchised automobile dealer of defendant Chrysler Motors Corporation and have for many years been a member of the Independent Dealer Committee Dedicated to Action, formerly the Independent Dodge-Chrysler Dealer Association ("IDCDA"). I submit this affidavit in connection with the motion of defendants to disqualify the firm of Hammond & Schreiber from acting as counsel for plaintiff in this action.

2. For many years prior to his formation of the firm of Hammond & Schreiber, Alexander Hammond, Esq., acted as counsel for IDCDA. By virtue of IDCDA, as strengthened by Mr. Hammond's reputation and ability as a dealer lawyer, we Chrysler dealers in the New York City area have been able to lighten the coercive hand of Chrysler in our relationship with Chrysler. For example, with Mr. Hammond's indispensable assistance, in 1968, a New Jersey dealer invalidated the coercive and unfair Minimum Sales Responsibility ("MSR") provision then and still contained in all Chrysler

dealership agreements. This provision, by its terms, leaves at least half of all Chrysler dealers subject to termination at any time. Although there have been MSR terminations recently, there has not been one in this area for many years. I believe that if Mr. Hammond is prevented from representing Chrysler automobile dealers, the ax will unfairly fall on many dealers in view of Chrysler's apparent nationwide policy of eliminating private capital dealers and establishing factory branches in major metropolitan markets.

3. It should also be pointed out that many IDCDA members are fearful of the consequences of disclosure to Chrysler of their IDCDA membership. Consequently, except for members of the Executive Board, IDCDA has kept its membership list confidential. Indeed, when Chrysler attempted to subpoena our entire list, the association resisted and Chrysler withdrew its subpoena.

4. I trust that the Court will carefully consider the consequences of its ruling on many, especially small, Chrysler automobile dealers.

David R. S.

Sworn to before me
this 31st day of AUGUST, 1973.

John J. Zaccchio

JOHN J. ZACCCHIO
Notary Public, State of New York
No. 60-4375630
Qualified in Westchester County
Term Expires March 30, 1975

Similar affidavits have been filed by Malcolm Davis, Herbert C. Schwartz, Murray Kaplan, Charles P. Gallagher, Martin Frankel, Lester Rosenstock, Philip P. Buxbaum, Jr., Gerald Weiss, Edwin Lutzer, and Raphael Cohen.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK



-----x
SILVER CHRYSLER PLYMOUTH, INC., :
Plaintiff, : 73 Civ. 853
-against- : (Weinstein, J.)
CHRYSLER MOTORS CORPORATION and :
CHRYSLER REALTY CORPORATION, : REPLY
Defendants. : AFFIDAVIT
-----x

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

ROBERT EHRENBARD, being duly sworn, deposes and
says:

I am a member of the firm of Kelley Drye Warren
Clark Carr & Ellis, ("Kelley Drye"), attorneys for the
defendants herein. I submit this affidavit in reply to the
affidavits served on September 4, 1973 in opposition to
defendants' motion to disqualify and enjoin plaintiff's
attorneys ("Hammond & Schreiber") from participation in this
suit and to dismiss the complaint because of such disquali-
fication, and in support of said motion.*

* Defendants' motion also sought dismissal of the complaint
with prejudice on the grounds of the statute of frauds,
but we urged the Court to defer consideration of that
portion of the motion until determination of the branch
relating to disqualification of counsel. While plaintiff's
papers contain inaccurate comments regarding the statute
of frauds issue and the underlying merits, its papers are
directed essentially to the disqualification motion, and
plaintiff's counsel agree that said motion should be
determined first. (See plaintiff's memorandum, pages 1,
9-10). I accordingly will not, in this affidavit, discuss
plaintiff's comments directed to the statute of frauds
branch of the motion or to the merits of their claim. In
addition, there are many irrelevant allegations contained
in plaintiff's numerous affidavits and exhibits, which
are inaccurate or with which I disagree, but will not
specifically discuss herein.

My primary purpose in filing this affidavit is to demonstrate the inaccuracy of allegations in the answering papers served by Hammond & Schreiber pertaining to the question of disqualification, and to point out to the Court several of the deceptive statements appearing therein. Among the areas that will be explored below are (i) the inaccurate statements which picture Mr. Schreiber as a mere legal researcher in our library, uninformed of the facts of the matters being researched, instead of as the associate with serious responsibilities in major Chrysler litigations and other matters, with extensive exposure to many aspects of Chrysler policies and practices upon some of which he also had an influence; (ii) the absurd notion that confidential information is withheld from associates in this firm -- when, in fact, our policy is exactly the opposite whether associates "work on" the particular matter or not, and to follow the practice described by Hammond & Schreiber would clearly be self-defeating; and (iii) the misleading description offered by Hammond & Schreiber as to the formation of the Hammond-Schreiber association and Mr. Schreiber's contribution to it.

The fact is that Messrs. Hammond and Schreiber began their association not in August, 1970, as stated on page 4 of Mr. Schreiber's affidavit, and page 1 of Mr. Hammond's, but rather by December, and probably earlier in 1969 -- or about nine months or less after Mr. Schreiber left my firm. A suit on which they collaborated as attorneys for plaintiff was initiated only one week after

final disposition of a pending dealer suit against Chrysler in which Mr. Hammond and my firm were adversaries. As will be shown below, a misuse of confidential information acquired by Mr. Schreiber while with my firm was a prominent feature of their association from the very beginning.

A secondary purpose in filing this affidavit is to spell out in more detail, pursuant to the request on page 8 of Mr. Schreiber's affidavit, the range of Mr. Schreiber's activities while with my firm, as well as my firm's activities during the period of his association. I am acceding to plaintiff's request, however, without prejudice to my position that a more than ample showing of grounds for disqualification has already been made in our initial moving papers.

Hammond & Schreiber mistakenly assume that defendants have the burden of identifying "specific confidential information about Chrysler" that Hammond & Schreiber "have or might use in this case". (See page 2 of Mr. Schreiber's affidavit). Yet as demonstrated in our prior memorandum and in the reply memorandum filed herewith, courts do not place such a burden on former clients seeking disqualification, lest it be necessary to reveal on their motion the very confidences sought to be preserved. In addition, exploring the mind of plaintiff's counsel for the purpose of identifying such information is a most difficult task -- readily subject to error and abuse. In any event, the

appearance of impropriety is as offensive as impropriety itself, and there is no way plaintiff's counsel could possibly negate that appearance in this case. For all of these reasons, the courts have held that on a motion for disqualification of attorneys, all that need be shown is the potential for and appearance of improper conduct, a showing which unmistakably appears in my prior affidavit herein. My further discussion of work done at my firm will accordingly be limited so as not to disclose confidential information and, again in accordance with Mr. Schreiber's request, will deal primarily with matters of "public record" (page 8 of his affidavit).*

Scope of Mr. Schreiber's Activities At Kelley Drye.

Plaintiff's papers apparently concede that disqualification of Mr. Schreiber would require disqualification of his firm, but contend that Mr. Schreiber himself should not be disqualified because during his several years with my firm he allegedly devoted only a small portion of his time to a few Chrysler matters, and had very little responsibility in even those matters. This contention is incorrect,

* I note in this connection the improper suggestion of Mr. Schreiber, in the footnote on page 8 of his affidavit, that plaintiff's attorneys should be permitted to examine our files in preparing their opposition to the present motion. The simple answer is that such an examination would merely enable plaintiff's attorneys to reinforce and update their confidential information of Chrysler matters already available through Mr. Schreiber, thereby aggravating the present situation. Plaintiff's suggestion must accordingly be rejected. Likewise, in referring to the matters of public record and nature of Mr. Schreiber's relationship with my firm and Chrysler, I can at best indicate the tip of the iceberg of confidential information he acquired and to which he had access.

however, as Mr. Schreiber worked on many Chrysler matters covering a broad range of Chrysler's business, including dealer cases and real estate matters -- the very issues presented by the instant case -- as well as many other very important matters. Mr. Schreiber's characterization of our position, on page 7 of his affidavit, is thus erroneous. He was given great responsibility on some major litigation matters, including the Ezzes and Checker Motors cases cited on pages 9-10 of his affidavit, played an important role in reviewing files, gathering facts and planning strategy and tactics in handling these cases and in deciding on the policy questions involved, and he met and spoke with senior Chrysler attorneys. Contrary to Mr. Gurney's recollection, Mr. Schreiber was assigned in September 1966, immediately upon his return to my firm, to work with me on the Ezzes case, which was one of the major Chrysler cases then in our office, and Mr. Gurney met Mr. Schreiber shortly thereafter and worked with us on that case.

While Mr. Schreiber admittedly also spent time on non-Chrysler matters, that fact cannot obscure the reality that he received confidential information from Chrysler while he was working on its cases. Mr. Schreiber claims that his participation on certain of the Chrysler cases was not meaningful in relation to this firm's involvement, or that he did less work on such matters than did Mr. Gurney. (pages 10-11, 14 of his affidavit). That is totally irrelevant, however, the issue being not what other

associates did but whether or not Mr. Schreiber, during the course of his own participation, may have received or been exposed to confidential information.

Mr. Schreiber's response appears to be that as an associate working on cases he did not receive any confidential information, and even Mr. Hammond offers his gratuitous remarks, based on nothing but the remotest hearsay, that associates in firms representing Chrysler generally do not receive confidential information (pages 7-8 of Mr. Hammond's affidavit). This, of course, is totally untrue and incredible. Associates of this firm, in handling cases or otherwise assisting clients, are expected to, and do, seek out information from whatever sources are appropriate, including files and employees of the client and this firm's own attorneys and its files. It has been our policy at least as long as I have been connected with this firm for partners and associates to freely discuss pending cases and to constantly exchange ideas, formally and informally, both with attorneys specifically assigned to the cases as well as those who are not. Such discussions, for example, took place at meetings of the litigation department, which Mr. Schreiber attended. Mr. Schreiber concedes, on page 3 of his affidavit, that he did research and drafted parts of briefs for Chrysler matters. Obviously we made every effort to fully acquaint him with the facts of the cases he was working on, and directed or authorized him to seek further information from the client, because his work would have been of little value if it were based on less than all the

facts. While our associates generally do not convey such confidential information to Mr. Hammond (see page 7 of his affidavit), that is hardly a basis for concluding that they do not possess the information. Mr. Schreiber obviously obtained confidential information from other attorneys in this firm, from Chrysler employees, and from the files in this office or received from Chrysler.

While conceding that he had daily contacts with other Kelley Drye attorneys and some contact with Chrysler employees (page 15 of his affidavit), Mr. Schreiber argues that his contacts with the latter was occasional, and he singles out Keith Jenkins, one attorney on Chrysler's legal staff, with whom he allegedly had no contact. Even if his statement were true, there was nonetheless ample opportunity to obtain confidential information from other attorneys in this firm without extensive direct contact with client employees.

But in fact Mr. Schreiber's contact with Chrysler personnel was far more extensive than he concedes. While on page 15 of his affidavit Mr. Schreiber concedes only one meeting with "a former general counsel" for Chrysler, intending David W. Kendall, Esq., a Vice President, the fact is that between Sept. 1966 and June 1967 Schreiber met with Mr. Kendall and me on at least five occasions in connection with the Ezzes case alone, and on two of those occasions G. L. Philp, Esq., a member of Chrysler's legal department,

was present as well. In addition, some of our records show that he had other contacts with Chrysler attorneys, including Hira D. Anderson, Esq., with whom he spoke many times, and also William Huth, Esq., and Mr. Philp. These attorneys all had offices in Detroit and were actively involved with various Chrysler legal matters being handled by our office and otherwise.

The records also show that Mr. Schreiber spoke often with Roy Rose, an official of Chrysler Manhattan, a Chrysler wholly-owned dealership in New York City on whose behalf Schreiber did extensive work. Indeed, he was given responsibility for handling the whole gamut of legal matters for Chrysler Manhattan, which were far from limited to warranty claims. Mr. Schreiber conferred with H. P. Ferris, New York Regional Manager of Fleet Sales for Chrysler Motors, and A. A. Glen, of the same office, in October 1968. He was also in touch with Chrysler employees in the New York regional office, including representatives who were in daily contact with Chrysler dealers. And of course Mr. Schreiber received letters and other materials from Chrysler employees, which in all probability contained confidential information.*

* Mr. Schreiber is apparently confusing confidential business information with client confidential communications to an attorney. While, contrary to his contention, he received a large quantity of even the former with regard to Chrysler, he obviously received an even greater quantity of the latter, and on a day-to-day basis.

While the passage of time apparently dimmed Mr. Schreiber's recollection of these contacts, the fact remains that confidential information was received through them, and may have been, or could be, consciously or unconsciously, used by him in the suit at bar.

While employed by Kelley Drye, Mr. Schreiber became familiar not only with his own Chrysler matters at Kelley Drye, but also with the matters during his tenure handled by others of our attorneys; his suggestion that he lacked the curiosity to inquire about matters on which his fellow-attorneys worked, that they failed to discuss their work with him, or that only partners knew about such other matters, is absurd. Indeed, Mr. Gurney, in his affidavit, concedes that he sought Mr. Schreiber's assistance on one Dealers' Day in Court Act case, DiCarlo; may have spoken to him about the Buono case, another suit brought under that Act; and that Mr. Schreiber may have done research on a dealer suit. Mr. Baum similarly concedes that he may have asked for Mr. Schreiber's assistance on the Chrysler Motors Corporation v. Estree Corporation case. It is equally apparent that other attorneys with this firm, in addition to Messrs. Gurney and Baum, freely discussed their work for Chrysler with Mr. Schreiber.*

* While the Gurney and Baum affidavits seek to play down the extent of Mr. Schreiber's representation of Chrysler, the simple fact is that neither of those affiants was familiar with the full scope of Mr. Schreiber's activities, nor is either in a position to state what Mr. Schreiber did not do or learn. Indeed, both Mr. Gurney and Mr. Baum are obviously working solely from memory, and "without the benefit of time records" (page 2 of Mr. Gurney's affidavit). Further, Mr. Gurney, contrary to his suggestion, was not the only associate in this office working on dealer suits.

Mr. Schreiber's familiarity with Chrysler matters in the office not directly worked on by him is further apparent from the fact that while here he was in charge of organizing a library or special file consisting of litigation memoranda and forms in the office. He could not have performed that function very well without becoming familiar with most of the Chrysler cases. The fact that he was given such an assignment also shows that he was given responsibility and trusted.

The point, in brief, is that whether or not specific conversations are now recalled, it is virtually certain that Mr. Schreiber was able to and did discuss with fellow attorneys or Chrysler employees many of the Chrysler matters worked on by Kelley Drye during his association, including many dealer and real estate matters. Any assumption that confidential information did not thereby pass to him is both unrealistic and contrary to the irrebuttable legal presumption that attorneys in one firm share information with one another.

Mr. Schreiber argues, on page 16 of his affidavit, that information contained in the files of this firm should not be imputed to him because he did not rifle the files or pilfer information. We do not, of course, need to contend that he did, yet in the course of his work on Chrysler matters he undoubtedly had occasion to examine and study Chrysler files in other matters that may have appeared relevant to his work. While it might be difficult, if not impossible,

at this point to identify specific files that he went through, it is most likely that he received confidential information from our files that has been, or would be, useful in the suit at bar. The point is that in the face of a substantial question of whether or not confidential information has been or will be actually misused, the only safe way to assure the confidentiality of client communications and the appearance of propriety is for the Court to disqualify Hammond & Schreiber.

On pages 12-13 of his affidavit, Mr. Schreiber disputes my contention that while an associate in my firm he may have influenced Chrysler policies or practices. Mr. Schreiber's professed modesty on this and other issues, however, misses the point, as Chrysler's policies and practices are often influenced by legal advice, and Mr. Schreiber, during his tenure with us, helped shape that legal advice in many ways on many occasions -- both in papers that he himself drafted, letters or other material that he sent to Chrysler, and in being consulted on other matters. My statement to that effect is therefore neither inaccurate nor exaggerated. I especially recall that he was influential in giving advice regarding modification of some important nationwide programs Chrysler was reviewing and revising, and that he was given responsibility for discussing the advice directly with Chrysler personnel.

The Hammond-Schreiber Collaboration.

Since Hammond & Schreiber have tried to convey the impression that they had no professional contact with each other until 18 months after Mr. Schreiber left our firm, I think it incumbent on me to convey to this Court the true facts -- facts which are curiously omitted from, or mis-stated in, plaintiff's papers. As noted above, Mr. Schreiber's association with Mr. Hammond began not in August 1970, as both of those gentlemen have stated in their affidavits, but rather by November or December 1969 at the latest. Clear evidence to that effect is the complaint in an action entitled Pearlman v. Markin, et al., 69 Civ. 5397, an action in the United States District Court for the Southern District of New York. A copy of the complaint is annexed hereto as Exhibit "A". As the Court will note, the complaint, filed on December 5, 1969, was brought by Mr. Schreiber, of White Plains, New York, as attorney for plaintiff, and by Mr. Hammond "of counsel".* In view of the length and complexity of that pleading, it appears that Mr. Hammond's collaboration with Mr. Schreiber on that action must have commenced well in advance of December 5, 1969 -- probably no later than about November 1969, or within 9 months after Mr. Schreiber left my firm in February 1969. Mr. Schreiber's claim, on page 4 of his affidavit, that his association with

* Mr. Schreiber claims, on page 4 of his affidavit, that his practice in White Plains, New York was "far from New York City", yet as the Pearlman complaint makes clear, it was within easy reach of a Federal Court in New York City. It is also noteworthy that, contrary to Mr. Schreiber's contention, his practice while in White Plains was hardly limited to criminal or negligence matters (also on page 4 of his affidavit).

Mr. Hammond did not constitute a switching of sides because it began "eighteen months" after leaving Kelley Drye is thus untrue.

Indeed, the impropriety of the Hammond-Schreiber association from its very inception is further evident from the fact that a dealer's action against Chrysler Motors and Chrysler Corporation, in which Mr. Hammond represented the plaintiff and my firm represented the defendants, was not disposed of until November 28, 1969, just one week before Hammond and Schreiber jointly filed the Pearlman complaint. The dealer's case to which I refer, which will be further discussed below, is Long Island Motors, Inc. et al. v. Chrysler Motors Corporation and Chrysler Corporation. As will be demonstrated below, the Long Island Motors case had been in the Kelley Drye office from November 1966, or for more than two years of Mr. Schreiber's tenure, and it raised issues relating to confidential Chrysler practices that were within Mr. Schreiber's ken while in our employ. A copy of the stipulation of dismissal in that case, so ordered on November 28, 1969, is annexed hereto as Exhibit "B".

The impropriety of the Hammond-Schreiber collaboration is further illustrated by the use of information obtained by Mr. Schreiber at Kelley Drye as the basis of allegations in the Pearlman complaint. Pearlman was a derivative suit against Checker Motors Corporation, one of the named defendants therein; Checker, of course, was the plaintiff in the Checker Motors Corporation v. Chrysler

Corporation and Chrysler Motors Corporation suit being handled by my firm, on which Mr. Schreiber worked together with Mr. Gurney for hundreds of hours during his association with us. Indeed, on page 9 of his affidavit, Mr. Schreiber characterizes Checker as "the primary Chrysler case that I worked on while at Kelley Drye." Copies of pleadings in the Checker case, together with my affidavit therein sworn to on October 24, 1967 (without Exhibits), are annexed hereto as Exhibit "C".

I submit that allegations contained in the Pearlman complaint, as well as knowledge of Checker's and Chrysler's operations and practices reflected therein, derive in large part from information acquired by Mr. Schreiber while working at Kelley Drye on Chrysler matters, and particularly the Checker case -- including information uncovered through his own efforts and research and those of other Kelley Drye attorneys or Chrysler employees, as well as information obtained from Checker through discovery and other proceedings. While my contention cannot be fully documented without revealing a great deal of confidential matter transmitted to Mr. Schreiber while at Kelley Drye, which I will not do, there is convincing evidence to this effect on the face of some of the papers filed in the Checker case. It should be understood, however, that only a small fraction of Mr. Schreiber's knowledge of Checker and Chrysler operations obtained through his work at Kelley Drye is reflected in the papers from that suit.

One allegation in the Pearlman complaint stems

directly from Chrysler's counterclaim in the Checker suit. In paragraph 21 of the Pearlman complaint, plaintiff alleged that Checker's taxicabs were sold, for the most part, to captive operating subsidiaries, or to other companies which, because of tying arrangements in connection with the sale of medallions by a Checker subsidiary, were required to acquire Checker taxis. As the Court will note, those very allegations are set forth in paragraphs 10-32 of Chrysler's counterclaim in Checker, and the sale of medallion issue is also mentioned at pages 12-14 of my annexed affidavit.

Other allegations in the Pearlman complaint derive from various defenses used by Chrysler in the Checker action, which were studied, and even developed in part, by Mr. Schreiber while acting on Chrysler's behalf at Kelley Drye. For example, a primary theme of the Pearlman complaint relates to the inefficiency of Checker's manufacturing and sales operations and the losses resulting therefrom (see, for example, paragraphs 16-17, 19 and 23 of the complaint therein); yet these were precisely among the issues developed at my firm in defending against Checker's motion for "partial summary judgment" in the Checker suit, as reflected at pages 9-11 of my affidavit therein. Similarly, the inadequacy of the Checker taxicab and Checker's failure to honor its warranty are alleged in paragraphs 22 and 24 of the Pearlman complaint, and those allegations mirror the work done at Kelley Drye, as reflected in statements appearing at pages 11-12 of my affidavit in Checker. Further, Checker's loss of business as a result of "hostile and vindictive conduct"

by its officers, alleged in paragraph 26 of the Pearlman complaint, is derived from work done at Kelley Drye, as reflected at pages 14-15 of my affidavit in Checker.

Even more noteworthy are the allegations in paragraphs 19 and 20 of the Pearlman complaint dealing with the operations and profitability of Chrysler and the other automobile manufacturers as compared to the operations and profitability of Checker. One of the important issues in the Checker case concerned negotiations between Checker and Chrysler and the prices at which Chrysler might sell parts to Checker, and it is obvious that on the basis of knowledge of our investigation of these issues and Chrysler's confidential information that the main elements of these allegations were made and that information gained by Mr. Schreiber as an attorney for Chrysler was useful in drafting these allegations and would be helpful in any attempt to prove them.

In view of Mr. Schreiber's obvious use in Pearlman of information obtained while working for Chrysler at Kelley Drye, it is worth noting that neither this firm's nor Chrysler's consent to use of such information was sought by him.*

* Subsequently, during the course of the Pearlman litigation, plaintiff subpoenaed Chrysler and its records with regard to the Checker suit against Chrysler. We objected to the subpoena, on the primary ground that plaintiff's attorneys were disqualified. See paragraph 1 of our objections, a copy of which is annexed hereto as Exhibit "D". In light of our objections, plaintiff did not press for compliance with the subpoena.

The collaboration of Messrs. Hammond and Schreiber in the Pearlman case, I submit, affirmatively disproves plaintiff's claim herein that the partnership of those gentlemen consists of Mr. Hammond, as the expert, and Mr. Schreiber, as the young attorney lacking both expertise and confidential information, and hired merely to assist Mr. Hammond (page 4 of Mr. Schreiber's affidavit; page 8 of Mr. Hammond's). It is evident, rather, that the collaboration from its inception was based, at least in part, upon confidential information obtained by Mr. Schreiber at my firm, as in Pearlman. There is every reason to believe that the confidential information received from this firm by Mr. Schreiber has continued to be a basis of their relationship. Indeed, it should be noted that Mr. Gurney acknowledges that in the Fall of 1969, while he was an associate in our firm representing Chrysler and Mr. Hammond was its adversary in the Long Island Motors case, Gurney recommended Mr. Schreiber, with whom he had worked in our office on the Checker case, to Mr. Hammond, who, we are told, was looking for an attorney merely to do the "drudgery of litigation". Shortly thereafter, Schreiber and Hammond filed the Pearlman case against Checker, while Gurney was still in our office handling the Checker case for Chrysler.

Yet another illustration of the fact that Mr. Schreiber's collaboration with Mr. Hammond was improper from its inception is that it constituted a dramatic switching of sides by Schreiber in the midst of a struggle between Chrysler and its dealers. That struggle entered a new phase in or about October 1966, just after Mr. Schreiber's return

to Kelley Drye from his judicial clerkship, with the formation of Metropolitan Independent Dodge Dealers Association in New York for the purpose of pressing grievances against Chrysler. (See news clippings annexed hereto as Exhibit "E"). The questions raised and potential problems involved in those articles were given consideration by our firm and were discussed with Chrysler personnel as to possible courses of action that could be taken. The dealers' group has been succeeded by the Independent Dealer Committee Dedicated to Action ("IDCDA") which is apparently represented by Hammond & Schreiber (see dealer affidavits attached to plaintiff's papers). As an associate in our office, Mr. Schreiber could hardly not be aware of the growing "Dodge Dealer Rebellion", and of the spate of dealer litigation against Chrysler that followed, some of which was handled in our office and most of which was the subject of consultation by Chrysler with our firm. Schreiber himself was involved in some dealer's suits, and his statement, on page 4 of his affidavit, that his awareness of dealer litigation was remote until August 1970, is a blatant misstatement. The dealer cases handled by my firm will be further discussed below but, as already noted, plaintiff's attorney in one such suit was Mr. Hammond.*

The "Dodge Dealer Rebellion", with its attendant litigation, has continued through these associations ever since, with many attorneys in addition to Mr. Hammond

* Mr. Schreiber's claim, on page 13 of his affidavit, that he had no idea of who Mr. Hammond was until after leaving Kelley Drye is hard to believe not only because of Mr. Hammond's involvement with my firm as an adversary in the Long Island Motors case, but also because Mr. Hammond was himself deposed for three days in early December 1966 -- a matter much discussed by my firm's associates at that time.

representing the dealers, yet Mr. Schreiber has seen fit to take his confidential knowledge of Chrysler to the opposing camp, and to team up with the dealers against the client for whom he formerly worked. It is of particular interest to note that all five members of the dealers' steering committee mentioned in the Automotive News article dated October 17, 1966 (part of Exhibit "E" hereto) -- Harold Reese, Malcolm (Mel) Davis, Martin Frankel, Erwin Lutzer and Raphael Cohen -- are among the dealer affiants on the instant motion claiming that Mr. Hammond's representation is indispensable.

In addition, the dealerships headed by five of the dealer affiants on this motion were plaintiffs in a suit against Chrysler Motors that my firm handled while Mr. Schreiber was employed here. The suit is Ace Dodge, Inc., et al. v. New York Region Dodge Advertising Association, Inc., Index No. 14855/67, a suit in the Supreme Court of the State of New York, County of New York. A copy of pleadings therein is annexed hereto as Exhibit "F". The dealer affiants herein are represented among the plaintiffs in that case, as follows: Davis (S&W Sales Co., Inc.), Charles P. Gallagher (Gallagher's Inc.), Frankel (Tremont Dodge, Inc.), Philip P. Buxbaum (Phil's Auto Sales) and Lutzer (Stapleton & Schreider Motor Sales, Inc.).

In short, Mr. Schreiber and the firm of which he is a partner are now representing, in various grievances with Chrysler, the very organizers of, as well as participants in, the "Dodge Dealer Rebellion" which Mr. Schreiber for almost 2 1/2 years experienced and lived through as an attorney for Chrysler. If that does not constitute a switching of sides, I do not know what does.

Some of the Cases in which Mr. Schreiber
was involved while at Kelley Drye

Plaintiff has devoted much of its argument to the contention that Mr. Schreiber's activities in my firm were totally unrelated to the suit at bar -- a dealer's action against Chrysler based upon a real estate claim and the Dealers' Day in Court Act (15 U.S.C. §1221, et seq.). The fact is, however, that Mr. Schreiber himself did work on matters related to the issues in the case at bar, and that, in addition, he in all probability obtained further confidential information on the relevant issues from cases that he was not working on directly, but that were being handled by fellow attorneys at Kelley Drye during his association. Such confidences are irrebuttably presumed to have been shared by all attorneys in the firm, including Mr. Schreiber, in recognition of the actual fact as to our firm that attorneys freely discuss their work with one another. Mr. Schreiber thus became intimately familiar with a very wide range of Kelley Drye work for Chrysler. Some of the more relevant cases will be discussed below.

On page 10 of his affidavit, Mr. Schreiber concedes that he may have worked on Chrysler dealer cases while at Kelley Drye. Although he tries to minimize his participation, I don't think any lawyer can only partly represent a client, and no matter how large or small his role or participation, he owes the same duty to the client. One of the Chrysler dealer matters on which Mr. Schreiber did, in fact, work, apart from those matters recited in his and supporting affidavits, are Rocco Motor Sales Corporation v. Chrysler

Motors Corporation, a dealer's suit seeking substantial damages, in the Supreme Court of the State of New York, County of Westchester, Index No. 5120/1967; apparently among the items of damages sought by Rocco were its costs with respect to "maintenance, improvement and operation" of its dealership premises (paragraph 8 of the complaint). Mr. Schreiber was also involved in Bayside Motors, Inc. et al. v. Chrysler Corporation, Chrysler Motors Corporation, et al., 61 Civ. 1094, in the United States District Court for the Southern District of New York, a dealer's suit alleging, inter alia, like the case at bar, breach of the Dealers' Day in Court Act, (relied upon in the third and fifth claims in the complaint therein,) and breach of contract. In their separate answers, Chrysler Corporation and Chrysler Motors pleaded as affirmative defenses both the unconstitutionality of the Dealers' Day in Court Act, and the failure of plaintiff to comply with that Act. Significantly, the fourth claim in the Bayside complaint alleged breach of contract by Chrysler Corporation and Chrysler Motors, among other things, in failing to assist the dealer "in effecting an orderly and equitable disposition, by sale or lease" of the dealership premises. (paragraph 37 of said complaint).

Contrary to assertions in plaintiff's papers, Mr. Schreiber was also involved in the dealer's suit brought by his present partner, Mr. Hammond, Long Island Motors, Inc. et al. v. Chrysler Motors Corporation and Chrysler Corporation, an action for several million dollars damages for breach of contract and other matters. Mr. Hammond's complaint therein, interestingly, raised several issues on which Mr. Schreiber developed an expertise with this firm; in paragraph 12 of the complaint, Chrysler Motors' sales

policies regarding taxis (acknowledged on page 9 of Mr. Hammond's affidavit to have been learned by Schreiber while with my firm), and in paragraphs 15-16, the relations between defendants in the Long Island Motors suit and Chrysler Manhattan -- a wholly-owned dealership incorporated through Mr. Schreiber's efforts with us. (See also pages 3-5, 7-8, and 10-12 of defendants' amended answer). Nonetheless, as already noted, Mr. Schreiber's collaboration with Mr. Hammond was well underway one week after discontinuance of that suit.

Copies of pleadings in Rocco, Bayside and Long Island Motors are annexed hereto as Exhibit "G".

Apart from the dealers' suits discussed above, Mr. Schreiber did work on Chrysler real estate matters, and, regardless of his own allegations and those of Mr. Baum, he was involved in the Chrysler Motors Corporation v. Estree Company, et al. case in the Supreme Court of the State of New York, County of Westchester, Index No. 12419/1967. Contrary to the description offered by Messrs. Schreiber and Baum, that case sought a declaratory judgment and specific performance of an option by Chrysler Motors to lease not a vacant lot, but rather real estate upon which three dealership premises were located -- a Chrysler-Plymouth dealership, a Dodge dealership, as well as a Chevrolet dealership. (See paragraph 4 of the complaint, a copy of which, together with other pleadings, is annexed hereto as Exhibit "H".) The property was intended by Chrysler Motors for use as "an automobile sales and service establishment" (paragraph 1 of form of lease, part of

Exhibit 2 to the complaint). Also significant about Estree is that a possible Dealers' Day in Court Act suit in connection therewith was one of the concerns involved in its handling, and in fact such a suit did finally materialize in Crabtree Motor Sales, Inc. v. Chrysler Motors Corporation, 71 Civ. 2359, in the United States District Court for the Southern District of New York.

Mr. Schreiber also represented Chrysler real estate interests in matters related to the Chrysler-owned Circle Hotel, including a litigation entitled Polk v. Cross & Brown Co., a suit in the Civil Court of the City of New York, County of New York. He thereby became familiar with some of Chrysler's practices as a landlord. A copy of the pleadings in that suit is annexed hereto as Exhibit "I".

Further, Mr. Schreiber worked on very many additional Chrysler matters of various sorts, and, contrary to the impression he seeks to create in his affidavit, devoted well over one thousand hours to work on Chrysler matters. Indeed, he devoted hundreds of hours to just the Checker suit. That suit, incidentally, involved a much broader range of issues than acknowledged by him, covering many aspects of Chrysler's operations and activities throughout the country, and Mr. Schreiber's work on it was more extensive than he concedes. Most important, that suit specifically involved an issue as to the nature of Chrysler's relations with its dealers, and Mr. Schreiber was most active and instrumental in Chrysler's convincing the courts that, contrary to Checker's allegations in paragraphs 8 and 14(f)(i) of the complaint,

the Chrysler rebate plan operated without participation of Chrysler dealers. (page 10 of Mr. Schreiber's affidavit). The question of Chrysler dealer involvement and its relationships with its dealers was clearly a part of that case, as Checker contended that their relationship resulted in a violation of the Sherman Act.

Finally, Mr. Schreiber also worked on numerous warranty cases, suits by car owners against Chrysler and frequently a dealer as well, and through those cases, small in dollar-amount though some of them may have been, he became exposed to, and familiar with, many aspects of Chrysler's relations with its dealers. Indeed, in many such cases cross-claims are asserted between Chrysler and the dealer, or Chrysler is often brought into the suit as a third-party defendant by the dealer. The warranty cases, therefore, often become suits in which Chrysler Motors and a dealer have adverse interests.

Some of the Chrysler Matters Being
Handled at Kelley Drye during the
Period of Mr. Schreiber's Association

During the period of Mr. Schreiber's association with us, my firm handled numerous Chrysler matters, including many dealers' suits. Among the Dealers' Day in Court Act suits being handled by us at that time, two have already been cited in the affidavit of Mr. Gurney. DiCarlo v. Chrysler Motors Corporation, 68 Civ. 163, was a suit in the United States District Court for the Southern District of New York

seeking damages and injunctive relief, based on Chrysler Motors' alleged violation of that Act. In its answer Motors pleaded, inter alia, the unconstitutionality of the Act (sixteenth defense), plaintiff's non-compliance with the Act (fourteenth defense), and also raised defenses relating to the interpretation of the Act (second and third defenses). A copy of pleadings in that suit is annexed hereto as Exhibit "J". As noted above, Mr. Gurney, who worked on DiCarlo, states in his affidavit that he sought Mr. Schreiber's assistance on the case.

The other Dealers' Day in Court Act suit cited by Mr. Gurney is Buono Sales, Inc. v. Chrysler Motors Corporation and Chrysler Corporation. A copy of pleadings in that suit is annexed hereto as Exhibit "K". In Buono, as in Bayside and DiCarlo, the Chrysler defendants pleaded as a defense the unconstitutionality of the Dealers' Day in Court Act as well as plaintiff's non-compliance therewith (see final two pages of the answer). One of the items of damages apparently sought by Buono, like Rocco, was the amount spent "in connection with the maintenance, improvement and operation" of the dealership premises (paragraph 9 of the complaint).*

Another dealers' suit in this office during Mr. Schreiber's tenure was Levenson v. Chrysler Corporation and Chrysler Motors Corporation, a suit alleging breach of the

*Whereas the Buono answer was not drafted by our firm, we were, during Mr. Schreiber's association, actively involved in that case.

New York Dealers' Day in Court Act, General Business Law §197, et seq. A copy of pleadings in that suit is annexed hereto as Exhibit "L". As the Court will note, the defendants pleaded the illegality of the statute relied upon by the dealer. (paragraphs 8-10 of the answer).

~~Further~~ dealers' suits being handled by this firm during Mr. Schreiber's association included Riteway Motors, Inc. v. Chrysler Corporation, an action seeking substantial damages brought in the Supreme Court of the State of New York, County of Kings, Index No. 2475/1967, and Young Motors, Inc., v. Chrysler Motors Corporation, Civil Action 20031 in this Court. Copies of the pleadings in those cases are annexed hereto as Exhibit "M".

At the same time, this firm was actively engaged in handling various Chrysler real estate matters, including several transactions for the leasing of property by Chrysler Realty for sublease to Chrysler dealers, as well as other lease negotiations; landlord-tenant problems, including proceedings for tax reductions; and tax assessments on real property. One case of interest is Chrysler Motors Corporation v. Urban Investing Corporation, 64 Civ. 3842, in the United States District Court for the Southern District of New York, an action growing out of a lease of real property by Chrysler Motors for the purposes of constructing an automobile dealership. (paragraph 8 of the complaint, a copy of which is annexed hereto as Exhibit "N"). That case, of course, arose out of the same kind of transaction as is involved in this case, i.e., the relocation of a dealer, and

the Chrysler files relating to it would in all likelihood reveal confidential information concerning such matters as are involved in this case. Also of interest is Chrysler Motors Corporation v. RGR Associates, in the District Court of the County of Nassau, Third District, Great Neck, Index No. 231/1967. In that case, Motors was a lessee of certain premises which it sublet to a dealership and sued the landlord to recover the cost of repairing those premises. A copy of pleadings in that suit is annexed hereto as Exhibit "O".

In addition, as pointed out in my prior affidavit, this firm was actively engaged in reviewing a major financing undertaken by defendant Chrysler Realty in its initial stages, and thereby became familiar with many aspects of Realty's structure, corporate set-up and operations.

It should also be remembered that Mr. Schreiber was representing Chrysler at the very time the Dealer Relocation Agreement and Lease Agreement between Motors and plaintiff -- documents underlying the present suit -- were being negotiated and executed.

During Mr. Schreiber's absence from this office for his judicial clerkship, the firm also became involved with dealer relocation problems with regard to two dealerships -- Babylon Chrysler Plymouth, Inc. ("Babylon"), and Theodore Chrysler Plymouth, Inc. ("Theodore"), a predecessor to plaintiff herein. Mr. Schreiber may well have been informed of these matters upon returning to Kelley Drye in

the Fall of 1966. With regard to Babylon, this firm was involved in the dealership's relocation to new premises. Babylon executed a Dealer Relocation Agreement during Mr. Schreiber's association with us, in October 1965, and subsequently commenced suit against Chrysler in a suit entitled Babylon Chrysler Plymouth, Inc. v. Chrysler Motors Corporation and Chrysler Realty Corporation, a suit in the Supreme Court of the State of New York, County of Suffolk, which suit, like the present one, alleges an oral agreement to lease real property for a 25-year period, in reliance upon a Dealer Relocation Agreement. A copy of pleadings is annexed hereto as Exhibit "P". The Babylon suit has been claimed by Mr. Hammond to be very similar to the case at bar (at pp. 2-3 of his affidavit in support of his motion dated August 9, 1973, and in telephone conversations with my associate Ezra I. Bialik). Further, the complaint herein makes allegations regarding other dealers (paragraph 5), and it thus appears that plaintiff is seeking to make the events of Babylon, apparently including matters related thereto considered by this firm, an issue in this very case.

With regard to Theodore, this firm was involved in efforts by Chrysler Motors to relocate that dealership, then located on the same premises where plaintiff later did business until its relocation in 1968. Chrysler, in July 1965, obtained an option to purchase certain property in Port Jefferson, New York, and executed a Dealer Relocation Agreement with Theodore for the latter to move to a new facility to be erected thereon. Chrysler subsequently exercised its

option but the optionors balked, and this firm proceeded to bring suit against them for enforcement of the option. That action is entitled Chrysler Motors Corporation v. Wicks, and a copy of the complaint is annexed hereto as Exhibit "Q".

In view of just those few Chrysler matters listed above, on which Mr. Schreiber himself or his fellow attorneys worked, it is submitted that plaintiff's attorneys must clearly be disqualified in the present action.

On page 6 of his affidavit Mr. Schreiber states that the existence of other dealer suits against Chrysler based on issues comparable to those raised herein demonstrates that confidential information was not a pre-requisite for bringing the present action. Yet that is immaterial to the questions posed by our motion: Have Hammond & Schreiber, whether consciously or not, used confidential information in bringing the present action, in drafting papers or planning the tactics for it, or could they do so in the course of future proceedings herein; further, is there a sufficient likelihood of such an occurrence so as to taint this action with actual impropriety, or is there in any event an appearance of impropriety? The answer to those questions, I maintain, is clearly affirmative.

The Alleged Problem of
Widespread Disqualification

The answering papers on the present motion discuss at length the alleged problem of widespread disqualification reaching many former associates of any firm throughout the

country handling Chrysler cases. That argument is totally inapposite, however, because Kelley Drye is not any firm doing Chrysler work, nor was Mr. Schreiber any associate with this firm. As noted in my prior affidavit, this firm is "Counsel" to Chrysler Corporation, and has been so designated on the Chrysler annual reports since Mr. Schreiber came to work with us; no other law firm is so designated. (See for example the third from the last page of the Annual Report for December 31, 1967, a copy of which is annexed hereto as Exhibit "R".) As "Counsel", we have participated in a far broader scope of Chrysler activities than local attorneys, and we have continually received a great deal of confidential information from the Chrysler companies on a very wide range of their practices. It follows that the problem of disqualification is potentially far more serious with this firm than with local attorneys for Chrysler. Even so, while a former associate of this firm might not be automatically disqualified if he had never done any work for Chrysler and had never discussed Chrysler cases with others or reviewed Chrysler files, that would not help Mr. Schreiber, who devoted well over one thousand hours to work on Chrysler matters, apart from any time he might have spent in casual conversation about Chrysler with other attorneys or Chrysler employees. The suggestion on page 7 of Mr. Hammond's affidavit that Mr. Schreiber had only "peripheral contact" with Chrysler is thus absurd. Accordingly, for the purpose of the present motion the issue before the Court is merely whether Mr. Schreiber, who was very active representing a broad spectrum of Chrysler interests while

employed by the only firm in the country designated as "Counsel" to Chrysler, is subsequently disbarred from participating in the present dealer suit against that former client.

Mr. Hammond's Claimed Expertise

The papers of plaintiff's counsel charge us with a motive of seeking in fact to disqualify not Mr. Schreiber but rather his partner, Mr. Hammond, who describes himself in his self-flattering affidavit as being virtually the only attorney in the United States representing dealers. This charge as to our motivation is totally incorrect, and there is not a single item of evidence to support it. The basis and motive for this motion are Mr. Schreiber's former activities on Chrysler's behalf and not Mr. Hammond's claimed expertise. Further, the factual assumptions underlying plaintiff's charge are untrue. Mr. Hammond, of course, is only one of many attorneys bringing dealers' suits against automobile manufacturers. Indeed, of the many dealers' suits against Chrysler handled by this firm, Mr. Hammond was the attorney on only one case prior to present action. Attorneys other than Mr. Hammond brought on all of the dealer suits cited in this affidavit, except only the Long Island Motors case. Even Mr. Schreiber notes (on page 6 of his affidavit) that other dealer suits involving similar issues have been brought in other courts, presumably by other attorneys, and the Babylon case, said by Mr. Hammond to be similar to the case at bar, is being handled by a different attorney. It follows that Mr. Hammond's claim of

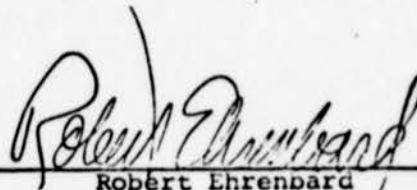
indispensability totally ignores reality. In addition, as already noted, Mr. Hammond's charge assumes that he is the only attorney in his own firm having any knowledge of automobile matters, whereas we have demonstrated that Mr. Schreiber's knowledge gained at Kelley Drye has been a basis of the Hammond-Schreiber collaboration from the very beginning.

Much is made in the answering papers of Mr. Hammond's alleged expertise in dealer's suits and of the need of dealers for his knowledge. Thus, several dealers have submitted identical speculative affidavits relating their alleged need for Mr. Hammond. Plaintiff's president is said (on page 9 of Mr. Hammond's affidavit) to have sought out Mr. Hammond because of his reputation, although there is no proof that plaintiff had not sought other counsel first. As already noted, many other attorneys have experience in dealer litigation and indeed many other attorneys have actually successfully tried cases against Chrysler.

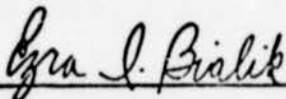
The point is that in view of his alleged specialization in the Chrysler dealer-suit or dispute area, Mr. Hammond should have scrupulously avoided collaborating, and later establishing a partnership, with a former associate of my firm -- a firm which he knew from the Long Island Motors suit discussed above to be Chrysler's attorneys. Indeed, he should not have involved himself in any matter with Mr. Schreiber in which Mr. Schreiber's knowledge of Chrysler would be useful or relevant. If Mr. Hammond were in fact merely seeking an attorney with litigation experience to help him with the "day-to-day drudgery of litigation" (page 4 of Mr. Schreiber's affidavit), the available market

in the New York City area must have numbered at least in the hundreds, and there was no need to select a former attorney for Chrysler. Mr. Hammond's selection of a former Kelley Drye associate, and his use of Mr. Schreiber's confidential information from as early as 1969 in the Pearlman suit, raises the question of whether in fact Mr. Hammond's selection of Mr. Schreiber was not motivated, at least in part, by knowledge of the exposure to Chrysler or dealer matters obtained in this firm. Further, as to the alleged lack of other attorneys to represent dealers, suffice it to say that courts, as demonstrated in the accompanying memorandum, have not found that circumstance to be a bar to disqualification, and have refused to carve out an exception to the Code of Professional Responsibility for specializing attorneys -- even in cases in which a large company seeks to disqualify the attorneys of a smaller corporation.

It is accordingly respectfully requested that the branch of defendants' motion for disqualification of, and injunctive relief against, plaintiff's attorneys, and for dismissal of the complaint because of such disqualification, be granted in all respects.


Robert Ehrenbard

Sworn to before me this
17th day of September, 1973.



EZRA I. BIALIK
NOTARY PUBLIC, State of New York
No. 31-5311160
Qualified in New York County
Commission Expires March 20, 1974

133 a



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
SILVER CHRYSLER PLYMOUTH, INC., :

Plaintiff, :

73 Civ. 853
(Weinstein, J.)

-against- :

CHRYSLER MOTORS CORPORATION and :
CHRYSLER REALTY CORPORATION, :

Defendants. :
----- X

EXHIBITS TO REPLY
AFFIDAVIT OF
ROBERT EHRENBARD
Dated September 17, 1973

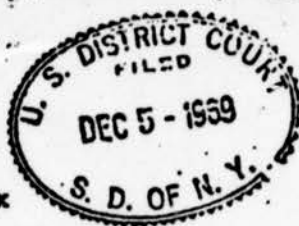
*Received By
Hammond & Scriber
Sept. 17, 1973 at 4:10 pm.
TF [Signature]*

35

Checker Motors

134 a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



MARTIN B. PEARLMAN,

Plaintiff,

-against-

69 CIV. 5397
69 Civ.

MORRIS MARKIN, DAVID R. MARKIN,
and CHECKER MOTORS CORPORATION,

COMPLAINT

Defendants.

Plaintiff, by his attorney DALE A. SCHREIBER, ESQ.,
for his complaint alleges, upon information and belief except
paragraphs 3 and 4 which are alleged upon knowledge, as
follows:

1. The jurisdiction of this Court in this derivative action for damages and other relief is based on diversity of citizenship as provided for by 28 U.S.C. §1332.
2. The matter in controversy exceeds the sum of \$10,000, exclusive of costs and interest, and this action is not a collusive one to confer jurisdiction on a court of the United States which it would not otherwise have.
3. Plaintiff is a citizen of the State of New York and resides in the Eastern District of New York.
4. Plaintiff is and has been continuously since October 16, 1968, the beneficial owner of one hundred (100) shares of the common stock of the defendant Checker Motors Corporation. Plaintiff brings this action derivatively on behalf of

237152

defendant Checker Motors Corporation, which has failed to enforce rights that may properly be asserted by it.

5. At all relevant times, defendant Checker Motors Corporation (hereinafter "Checker") has been and still is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business at 2016 North Pitcher Street, Kalamazoo, Michigan. Checker is doing business, is licensed to do business and may be found in the Southern and Eastern Districts of New York.

6. Defendant Morris Markin is a citizen of the State of Michigan.

7. For many years, defendant Morris Markin has owned and controlled and still owns and controls a controlling number of shares of common stock of Checker either directly or through his personal holding company Checker Taxi Company, Inc., which he controls through, among other things, his ownership of the common stock thereof. Checker Taxi Company, Inc. is a corporation organized and existing under the laws of the State of New York.

8. Defendant David R. Markin is a citizen of the State of Michigan.

9. Defendant David R. Markin is the son of defendant Morris Markin.

10. From at least 1936 until on or about May 29, 1969, Checker owned more than 60% of the outstanding stock of Parmelee Transportation Company (hereinafter "Parmelee"), which was a corporation organized and existing under the laws of the State of Delaware with its principal

place of business at 300 North Dearborn Street, Chicago, Illinois.

11. Since at least 1961, Checker, the individual defendants herein and one Herbert B. Lazarus, who is the son-in-law of defendant Morris Markin, caused Checker to purchase shares of Parmelee stock on the open market to increase Checker's, and hence their own, control over Parmelee. As a result thereof, by 1968 Checker owned almost 80% of the shares of Parmelee stock. On or about May 29, 1969, defendants Morris Markin and David Markin, together with Herbert B. Lazarus, caused Parmelee to merge into Checker, pursuant to a plan of merger dated as of January 24, 1969 providing for, among other things, the exchange of shares of Parmelee common stock for newly issued shares of convertible preferred stock of Checker.

12. At all relevant times, Parmelee, itself or through subsidiaries, had owned and operated, and since May 29, 1969, Checker has owned and operated and still owns and operates, taxicabs in, among other places, Chicago, Illinois, Pittsburgh, Pennsylvania, and Minneapolis, Minnesota. Until about 1962, Parmelee owned and operated taxicabs in New York City, New York through its wholly-owned subsidiary National Transportation Company.

13. At all relevant times and since at least 1928, Checker has been in the business of manufacturing or assembling automotive vehicles primarily for resale for use as taxicabs, which have been described by the individual defendants herein as "purpose-built". Since 1959, Checker has also manufactured or assembled for the ostensible purpose of resale at profit vehicles to be used for private passenger car purposes. Checker has not in recent years produced or sold many more than 6,000 passenger car or taxicab units

annually and its sales have constituted less than 1/10 of 1% of domestic automobile sales of American manufacturers.

14. At all relevant times and since at least 1928, defendant Morris Markin has been President and Chairman of the Board of Checker and had been Chairman of the Board of Parmelee until its merger with Checker; since at least 1957, defendant David R. Markin, son of defendant Morris Markin, has been Secretary or Vice President of Checker and since at least 1962 a director of Checker; since at least 1958 Herbert B. Lazarus, son-in-law of defendant Morris Markin and brother-in-law of defendant David R. Markin, has been a director of Checker and had been a director and President of Parmelee until Parmelee was merged into Checker. These individuals constitute and have constituted for many years a majority of the Board of Directors of Checker.

15. At all relevant times through, among other things, his ownership and control of the stock of Checker, the pressures exerted on his son, son-in-law, and others, and the strength of his personality, defendant Morris Markin had dominated the boards of directors and management of both Checker and Parmelee and since the merger of Parmelee into Checker continues to dominate the board and management of Checker. He has operated and managed Checker and Parmelee as his personal enterprise basing corporate decisions on his own personal desires and private motives, which are and have been totally unrelated to, and in complete and willful disregard of, the best interests of Checker and its shareholders and continues so to operate and manage Checker. Defendant Morris Markin has stated that he personally makes "all the major decisions" of Checker which he has characterized as "my company". Through his one-man rule, management, policies and acts, and those of Checker's officers and directors under his

domination and control, defendant Morris Markin has caused and continues to cause enormous waste and spoliation of Checker's assets and good will.

16. At all times relevant and since at least 1955, Checker's production of automotive products has been and continues to be economically unfeasible and totally unjustified for reasons hereinafter set forth; such production has been continued and is being continued solely to satisfy defendant Morris Markin's personal vanity to be a "manufacturer" of automobiles, regardless of the cost to, and against the best interests of, Checker and its shareholders.

17. Since 1955, Checker's automotive production has built an operating deficit of almost fifteen million dollars. Checker has maintained its solvency solely from dividends obtained from its profitable and majority-owned operating company Parmelee and since the merger of Checker and Parmelee continues to do so only from profits derived from Parmelee's former street operations. From 1955 through 1967, Checker reported the following figures from its assembling and/or manufacturing operations and dividends received from Parmelee:

	Checker's Operating Profit (Loss)	Checker's Dividend from Parmelee	Checker's Net Profit (Loss)
1955	(1,191,148)	222,894	(968,254)
1956	(1,103,940)	222,394	(881,054)
1957	(1,413,903)	160,393	(1,253,510)
1958	(1,806,439)	468,680	(1,337,759)
1959	(636,505)	1,545,509	909,004
1960	(983,356)	883,148	(100,208)
1961	(642,373)	110,394	(531,979)
1962	559,073	358,779	917,852
1963	(279,321)	441,574	162,253
1964	(1,095,594)	441,574	(654,020)
1965	(1,122,223)	441,574	(680,649)
1966	(1,465,880)	441,574	(1,024,306)
1967	(1,157,237)	441,574	(715,663)
Total	(12,338,854)	6,180,561	(6,158,793)

The precise amount of the loss from Checker's assembling and/or manufacturing operations for 1968 cannot be determined from its published financial statements, which are based upon a

new and uninformative format. However, these statements concede that Checker sustained an operating loss of at least \$329,685 and received dividends from Parmelee of at least \$883,148.

18. Although Parmelee generated substantial revenues and profits, Checker's pro rata share of Parmelee's profits has not been profitably employed because, among other things, the individual defendants and Lazarus have, under the domination of defendant Morris Markin, willfully refused to engage in profitable and growth-potential operations. From 1955 through 1967, Parmelee reported the following figures:

Year	Parmelee's Operating Revenue	Parmelee's Profit	Checker's Pro Rata Share of Parmelee's Un- distributed Earnings
1955	29,996,453	1,718,304	842,458
1956	27,932,823	3,556,057	2,028,304
1957	28,107,715	1,982,156	1,166,935
1958	25,060,097	3,696,753	1,861,920
1959	22,463,046	2,778,667	206,287
1960	23,521,383	407,087	(626,503)
1961	23,256,445	2,498,391	1,464,705
1962	17,077,020	6,751,249	3,987,512
1963	15,990,151	395,969	(41,334)
1964	14,136,550	4,782,763	2,582,332
1965	13,972,598	665,797	31,091
1966	14,111,831	2,130,229	1,104,298
1967	15,191,242	1,492,519	1,121,395
Total	270,817,354	32,855,941	12,711,400

Since the merger of Parmelee into Checker, the individual defendants and Lazarus, under the domination of defendant Morris Markin, have continued to refuse to employ profits from Parmelee's former operation in profitable and growth potential operations.

19. The individual defendants and Lazarus, under the influence and domination of defendant Morris Markin, have continued to cause Checker to waste its assets and persist in its deficit manufacturing and/or assembling operations in spite of the fact that it has been economically impossible

for Checker to compete with the larger and much more highly efficient automobile manufacturers in the United States and elsewhere, as the individual defendants and Lazarus knew or should have known. The American automobile manufacturers produce for use as a taxicab and sell in competition with Checker stock cars modified for taxicab use at significantly lower prices that Checker cannot profitably match or undercut. Among other things, these stock cars represent the last of many millions of stock cars produced annually by the large automobile manufacturers including General Motors Corp., Ford Motor Company, Chrysler Corporation, and American Motors Corporation (sometimes hereinafter referred to as "The Big Four"). Having the benefit of these mass production efficiencies, The Big Four produce stock cars to be sold for taxicab use at high profit margins and are able to sell them at reduced prices while maintaining feasible profit margins. On the other hand, Checker is able to assemble and sell no more than 6,000 vehicles annually at extremely low or no profit margin, before even deducting, among other things, sales, administrative and general overhead expenses. In addition, Checker must purchase, among other things, many of the basic components and supplies for its vehicles from The Big Four and others with whom it competes and therefore must pay a complete manufacturer's profit on these items before even beginning distribution of its completed product in competition with those of its suppliers. For this reason and others, the actual cost to Checker merely to assemble its vehicles

exceeded in some years the gross revenues obtained by Checker from their sale. The individual defendants, and particularly defendant Morris Markin, have been informed by Checker's internal accountants, outside public accountants, management consultants, sales and merchandizing specialists and engineers both inside and outside of Checker that Checker cannot possibly generate an operating profit on the annual volume of sales it has made for the last several years. Defendant Morris Markin has sworn and his attorneys have stated publicly that Checker cannot profitably compete with any of The Big Four in the sales of vehicles used for taxicab or private passenger car purposes. However, under the influence and domination of defendant Morris Markin, Checker has been caused to persist and persists in assembling and selling automobiles for taxicab and private passenger car use despite the inevitable losses described above and a declining sales trend both in terms of units sold and percentage of the marker.

20. The individual defendants have been informed and have known for many years and continue to be informed and know that the manufacturers of automobile including The Big Four have been confronted with rapidly increasing costs for labor and material; that these large manufacturers have been able to limit increases in prices and thereby remain competitive only by the acquisition of expensive mass production machinery and plants and by the introduction and maintenance of automated volume manufacturing procedures; that such machinery and automation has been and continues to be

142 a

economically available only to those manufacturing, producing and selling at least 300,000 vehicles annually in comparison with the approximately 6,000 vehicles annually assembled and sold by Checker and otherwise possessing high capital resources not possessed by or available to Checker; that without the benefit of the aforesaid capabilities, no automobile manufacturer is economically able to change or improve models, styles, performance, dependability and manufacturing procedures with sufficient regularity to meet changing consumer demand, competitive innovation and market obsolescence; and that a large number of automobile manufacturers, including Kaiser-Frazer, Willys, Packard, Studebaker, DeSoto and Hudson, were forced to discontinue production since 1950 by reason of their inability to maintain the aforesaid high volume and adopt the aforesaid high volume and the aforesaid cost-saving manufacturing procedures.

21. As a result of Checker's inherent inefficiency, as described above, a substantial part of Checker's taxicab vehicles historically and necessarily has been sold to captive operating subsidiaries, including Parmelee and its subsidiaries. Many of its sales to nonsubsidiaries in earlier years have resulted from formal or informal typing arrangements with New York City taxicab operators who were compelled to purchase taxicabs produced by Checker in order to acquire from Checker's subsidiary National Transportation Company medallions that enabled the owner to obtain a license to operate a taxicab in New York City. However, since 1962, when defendant Morris Markin caused

National Transportation Company to sell its last medallion in New York City, Checker's sales in New York City and elsewhere have seriously declined and continues to decline. At all times relevant herein, Checker has and has had a truly independent market of no more than three thousand sales annually, for which domestic automobiles cannot be profitably manufactured, as the individual defendants knew or should have known for the reasons, among others, set forth above.

22. The individual defendants, under the influence and domination of defendant Morris Markin, have publicly attempted to rationalize their continuing to cause Checker to produce and sell taxicabs at great loss to Checker and conceal these inevitable losses by calling the Checker model taxicabs "purpose-built". However, Checker's so-called "purpose-built" vehicle is totally unfit for the purposes of modern day taxicab operations. As a result of defendant Morris Markin's tenacious commitment to remain a "manufacturer" of automobiles, the individual defendants and others under their domination have caused the design of the Checker taxicab models to remain hopelessly outdated having not changed it appreciably since World War II. The individual defendants, and particular defendant Morris Markin, have refused to acknowledge or accept changing consumer demand in styling and design and the overwhelming consumer repudiation of the Checker taxicab.

23. To satisfy further defendant Morris Markin's desire to remain a "manufacturer" of automobiles, the individual defendants caused Checker in or about 1959 and continue to cause Checker to waste its assets further by assembling vehicles for private passenger use. The private passenger

144 a

car produced by Checker, however, is merely a modified version of its outdated and consumer repudiated, so-called "purpose-built" taxicab. At all relevant times, the individual defendants have known or should have known that there is no consumer demand to justify its assembling and attempting to market such a vehicle.

24. Under the influence and domination of defendant Morris Markin, the individual defendants have caused for many years since at least 1959 and continue to cause Checker to reduce the quality of its taxicab vehicle. For this reason and others described herein, Checker has lost and continues to lose the few taxicab customers it once had, including, among others, all substantial taxicab fleet owners in New York City, where most of Checker's sales had once been made. As a result, the Checker taxicab vehicle, despite the individual defendants' attempt to market this vehicle as "purpose-built" for the rigors of taxicab operation, has been characterized by its increased unwieldiness, sub-standard mechanical functioning, wasteful gas consumption, unfitness of essential components including transmission, lights, brakes and brake linings, doors and seats, and its short useful life as compared with its advertised useful life and those of competing stock cars. In addition, Checker has attempted to cut costs by failing and continuing to fail to honor its warranty and provide adequate service facilities for its customers. In these vital respects, among others,

and overall, the Checker taxicab is known by the taxicab operators and the taxicab industry in general to be greatly inferior to the stock cars taxicabs produced by The Big Four and others with which Checker attempts to compete.

25. The severe reduction in the quality of the Checker taxicab and services had been caused by, among other things: (1) defendant Morris Markin's personal desire to assemble a single vehicle that could be sold for both taxicab and passenger car use, which resulted in the individual defendants' and Lazarus' causing Checker to assemble a vehicle that is advertised by them as "purpose-built" but in fact is neither fit for passenger car nor taxicab use; (2) the inherent inefficiencies of Checker's low volume, obsolete assembly operations in which Checker must rely on myriad suppliers for basic components, which suppliers compete with Checker in the sale of automobiles; (3) the inability to compete in price with the mass production manufacturers including The Big Four. The individual defendants and Lazarus have at all relevant times been aware or should have been aware that these factors, among other things, render it economically impossible for Checker to assemble and market its vehicles profitably.

26. The individual defendants and Lazarus, under the influence and domination of defendant Morris Markin, have caused and continue to cause Checker irreparable loss and damage by engaging in a course of hostile and vindictive conduct against its former and potential customers, the large

fleet owners in New York City, in order to satisfy their personal grievances against, and vent their personal dislike of, these operators, which hostile and vindictive conduct has been judicially noted by this Court and the appellate court of this Circuit. Among other things, defendant Morris Markin has made public statements urging unionization of the New York City taxicab industry, higher wages for drivers without any fare increases. In addition, defendant Morris Markin has instituted a continuing campaign to have the Hack Bureau of the Police Department of the City of New York issue more taxicab medallions at little or no cost in order to depress the value of the presently issued about 11,000 medallions owned by New York City taxicab operators, many of which were purchased from National Transportation Company, a Checker subsidiary, for up to \$20,000 each by a significant number of the present taxicab purchasers in New York City and represent a sizable investment for them.

27. Defendant Morris Markin has engaged in self-dealing in violation of his fiduciary duties as an officer and director of Checker to his own enrichment. Among other things, he has caused Checker to sell vehicles, motors and parts to Checker Taxi Company, Inc., the stock of which he has owned, controlled, and dominated as aforesaid, and has caused said Checker Taxi Company, Inc., to sell the same at considerable profit, which profit belongs to Checker or its shareholders. In particular, defendant Morris Markin has caused Checker to

make sales directly or through subsidiaries of Checker, of vehicles, motors and parts to Checker Taxi Company, Inc. and its majority-owned subsidiaries at least as follows:

<u>Year</u>	<u>Vehicles Sales (in dollars)</u>	<u>Motor and Part Sales (in dollars)</u>
1968	1,261,461	292,759
1967	1,173,398	354,253
1966	1,273,534	400,694
1965	1,194,451	473,677
1964	929,696	502,226
1963	1,238,642	491,118
1962	1,432,978	629,586
1961	475,702	778,504
1960	1,062,115	773,641

A substantial percentage of the total amount of these sales represents profits reaped by Checker Taxi Company, Inc. upon, among other things, resale of these items. In engaging in the self-dealing and exploitation of corporate opportunities of Checker described above, defendant Morris Markin was motivated not only by the desire to profit at Checker's expense but to divert to Checker Taxi Company, Inc. operating revenues so that Checker Taxi Company, Inc. would not be deemed a personal holding company for tax purposes and thus has saved himself personally, and will continue to save himself unless enjoined, great amounts of money, all of which he is liable to return to Checker or its shareholders.

28. Through their desire to manufacture automobiles regardless of the cost to Checker and its related companies and the other acts and courses of conduct described above, defendant Morris Markin, defendant David R. Markin and Herbert B. Lazarus, under the influence and domination of Morris Markin, have failed and continue to fail, to obtain a fair return on Checker's assets, knowing such failure to be a necessary or likely consequence of their policies and conduct. Accordingly, they are liable for the amount of the difference between a fair rate of return on these assets and what profits, if any, Checker has attained, as well as

for all losses described herein and others.

29. At all relevant times, the individual defendants, Lazarus, and others also under the influence and domination of defendant Morris Markin, as part of the conspiracy and plan described herein, have caused and continue to cause Checker to issue false and misleading proxy, financial and other statements and reports that, among other things, have omitted the matters described herein and thus were able to perpetuate their positions as officers and directors of Checker and to cause it the irreparable damages for which recovery is sought in this action.

30. Although the substantial profits of Parmelee, as described hereinabove, were available for distribution, as dividends, through Checker to Checker's shareholders, the individual defendants, Lazarus and others also under the influence and domination of defendant Morris Markin have prevented Checker from paying any dividends since 1931 for personal reasons, including, among others, defendant Morris Markin's continuing desire not to pay income taxes on such dividends which, if paid, would be in large amounts to him, as owner either directly or indirectly of a majority of Checker's stock. By virtue of the individual defendants' overall mismanagement of Checker, as described herein, and their refusal to allow Checker to pay any dividends, the market value of Checker stock has been seriously depressed, to the extent that price per Checker share on the New York Stock Exchange and elsewhere is less than the liquidation value of the same share. The market value for Checker shares has been and continues to be sustained in large part by the hoped-for liquidation of Checker's manufacturing and/or assembling operations.

31. Prior to May 29, 1969^{148 a}, although defendant Morris Markin had dominated and controlled the management of Checker, Parmelee, and their resources at all relevant times, the individual defendants, and particularly defendant Morris Markin, had failed in their fiduciary capacities to cause Checker, although able to do so, to acquire the required number of shares of Parmelee stock to enable Checker to file consolidated federal income tax returns with Parmelee. The result had been to increase Checker's and Parmelee's tax liability, to prevent Checker from realizing full, if any, tax advantages from its continuing operating deficits and has reduced substantially the value of Checker's investment in Parmelee.

32. Defendant Morris Markin has dissipated the funds of Checker in violation of his fiduciary duties by, among other ways, payment of excessive salaries and other benefits to himself, members of his family, employees of other corporations controlled by him, and others, which themselves or in addition to other compensation or monies received by them were so received without adequate consideration.

33. No demands have been made on either the board of directors of Checker or its shareholders to commence this action since such demands would be futile for, among others, the following reasons:

(a) the individual defendants, as wrongdoers, constitute or control a majority of the members of the board of directors, and own and control directly or indirectly over half of the stock of Checker, and hence any suit brought by the corporation would be in the control of the wrongdoers and could not be properly prosecuted;

(b) the wrongs alleged herein constitute fraud and waste of corporate assets and cannot be ratified except

by the unanimous action of all stockholders of Checker;

(c) the time expended in making such demands, which would in any event be futile and would permit the waste of corporate assets to continue and the expense in making such a demand on stockholders would be prohibitive.

34. Except insofar as money damages are sought, plaintiff and those similarly situated have no adequate remedy at law and will be irreparably injured unless the above mentioned acts and conduct are enjoined.

WHEREFORE, plaintiff prays:

(A) that the defendants, separately and jointly, be enjoined perpetually from doing or engaging in any of the acts, practices, or courses of conduct complained of herein, including but not limited to, engaging in the business of manufacturing, and/or assembling and selling vehicles for passenger or taxicab use;

(B) that the individual defendants, jointly and severally, be held liable for all damages resulting from the matters described herein, including the amount of reasonable return on the assets of Checker that were knowingly employed in losing operations;

(C) that the acts, practices and conduct described herein be declared illegal and in violation of law;

(D) that defendant Morris Markin be held liable for punitive damages on account of his reckless, intentional and malicious acts that caused damage to Checker;

(E) that the defendant Morris Markin be permanently enjoined from (1) being employed in any capacity with Checker and (2) being associated or dealing in any way with Checker or its assets;

(F) that the defendants be directed to pay the amount of all damages for which any if found liable either

151 a

to Checker or Checker's shareholders to the extent necessary to prevent any defendant from unfairly benefiting from any judgment in this action;

(G) that defendant Morris Markin be directed to cause to be remitted to Checker or its shareholders, as appropriate, the profits of Checker Taxi Company, Inc. derived from the self-dealing described herein;

(H) that the individual defendants or Checker be directed to pay to plaintiff reasonable counsel fees and other costs and disbursements of this action;

(I) that the Court award such other and further relief as it may deem just and proper.

DALE A. SCHREIBER

By Dale A. Schreiber
Attorney for Plaintiff
Office & P. O. Address
175 Main Street
White Plains, New York 10601
Tel. # 914 WH 9-2907

Of Counsel:

ALEXANDER HAMMOND

Alexander Hammond
Office & P. O. Address
54 Riverside Drive
New York, New York
Tel. # 212 TR 4-4224

152 a

U.S. DISTRICT COURT

FILED

NOV 28, 1969

S.D. of N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
: LONG ISLAND MOTORS, INC., JAMES F.
WATERS, INC., ASHDOWN MOTOR SALES, :66 Civ. 3660 (WRT)
INC.,

Plaintiffs, : STIPULATION OF
: DISCONTINUANCE
- against - : WITH PREJUDICE
: ON THE MERITS

CHRYSLER MOTORS CORPORATION and
CHRYSLER CORPORATION,

Defendants.:
----- X

IT IS HEREBY STIPULATED AND AGREED by and between

the undersigned attorneys for the respective parties that
the claims interposed by plaintiffs in this action and
that the claims interposed by defendants in this action,
be, and the same hereby are, dismissed with prejudice on
the merits, without costs to any party.

Dated: New York, New York
November 26, 1969

Alexander Hammond
ALEXANDER HAMMOND, ESQ.
Attorney for Plaintiffs, Long
Island Motors, Inc., James F. Waters,
Inc. and Ashdown Motor Sales, Inc.

KELLEY DRYE NEWHALL MAGINNES & WARREN

By Kelley Drye Newhall Maginnes
A Member
Attorneys for Defendants,
Chrysler Corporation and
Chrysler Motors Corporation

SO ORDERED: 11/28/69

H. R. Tyler Jr.
U. S. D. J.

Nov 28, 1969

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X
CHECKER MOTORS CORPORATION,

Plaintiff, :

-against-

COMPLAINTCHRYSLER CORPORATION and CHRYSLER
MOTORS CORPORATION,

: Civ.

Defendants.
-----X

Plaintiff by its attorneys, GALLOP CLIMENKO &
GOULD, for its complaint herein respectfully alleges:

1. This action is brought under Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15 and 26) for threefold the damages sustained by plaintiff in its business and property by reason of violations by defendants and others of the antitrust laws of the United States (15 U.S.C. §1 et seq.), and for injunctive relief against said violations.

2. By virtue of Section 14 of the Clayton Act (15 U.S.C. §24), the violations of the antitrust laws by defendant corporations and their co-conspirators are deemed also to be violations by the individual directors, officers, or agents of such corporations who authorized, ordered, or did any of the acts constituting in whole or in part such violations.

3. CHECKER MOTORS CORPORATION is a New Jersey corporation qualified to do business in Michigan, with its principal place of business in Kalamazoo, Michigan. For more than forty years plaintiff's principal business has been the manufacture and sale of vehicles specifically designed

and constructed to serve as public conveyances for taxicab service. These are generally known in the automobile industry as "purpose built" taxicabs. By virtue of various special and unique features, the taxicabs manufactured by plaintiff (herein sometimes referred to as "Checker taxicabs") have become favorably known throughout the United States and have been widely used by large numbers of taxicab owners, operators and passengers in more than 800 cities. For many years, they have been the only domestic "purpose built" taxicabs.

4. Plaintiff has also produced other types of vehicles. Since 1960 plaintiff has manufactured and marketed private passenger automobiles featuring many of the special and unique qualities of the Checker taxicabs. In producing its taxicabs and other vehicles, plaintiff has incorporated into chassis and bodies of its own manufacture, engines, axles, transmissions and certain other parts purchased by it from independent suppliers.

5. Upon information and belief, at all times herein mentioned, defendants CHRYSLER CORPORATION, a Delaware corporation, and CHRYSLER MOTORS CORPORATION, a Delaware corporation, have had agents in and have transacted business in the Southern District of New York.

6. At all times relevant to this complaint up to and including the present date, defendants have been engaged in the business of manufacturing and selling in interstate commerce automobiles and automobile accessories and parts of all kinds. Defendants are one of the three major producers of automobiles and parts and accessories therefor in the United States. Their reported sales for the year

1963 were over \$3,500,000,000, and their reported net profits for such year were over \$161,595,000.

7. Among the products sold by defendants in interstate commerce, apart from automobiles, are engines and motors of various kinds, axles, transmissions, steering gears and other automobile components which defendants on occasion custom design for various purposes specified by their industrial customers. At all times relevant to this complaint such motors were sold and, upon information and belief, at times developed, by defendants or one or more of their subsidiary corporations or divisions.

8. Upon information and belief, various dealers appointed by defendants, including Future Motors, Inc., a New York corporation, and other persons to plaintiff presently unknown, conspired with defendants and were and are parties to the conspiracy hereinafter alleged.

9. The acts charged in this complaint to have been done by defendants and their co-conspirators were authorized, ordered, or done by the officers, agents, employees, or representatives of defendants and such co-conspirators while actively engaged in the management direction or control of their respective affairs.

10. Upon information and belief, commencing in or about 1960, and continuously to the date hereof, defendants, together with and through various of their subsidiaries, divisions, officers, employees, dealers and other persons and agents to plaintiff unknown, have been and now are engaged in an unlawful combination and conspiracy in restraint of interstate trade and commerce in the manufacture and sale of automobiles, especially those employed as taxicabs.

11. Upon information and belief, the aforesaid combination and conspiracy has consisted of a continuing agreement and concert of action among defendants and their co-conspirators, to eliminate plaintiff as a competitor in said commerce and trade by various means, including acts designed to hinder, obstruct, delay and curtail plaintiff's program of automobile production; to exclude plaintiff from the key New York City market and from other principal markets for its taxicabs and other types of automobiles; and to otherwise injure plaintiff in its business and trade, all as more fully hereinafter described.

12. Upon information and belief, commencing in or about 1960, and continuously to the date hereof, defendants attempted and combined and conspired to monopolize interstate trade and commerce in the manufacture and sale of automobiles used as taxicabs.

13. Upon information and belief, defendants (a) sold and conspired to sell automobiles, including automobiles sold for use as taxicabs, at discriminatory prices to different purchasers; (b) sold and conspired to sell automobiles for use as taxicabs subject to the payment of discriminatory allowances or rebates; and (c) made or conspired to make payments for the benefit of, and performed, or conspired to perform, services for different purchasers without making such payments and services available to all other purchasers on proportionately equal terms.

14. Upon information and belief, to effectuate said offenses, defendants and their co-conspirators have done those things which they attempted and combined and conspired to do, including, in part, the following:

a) In 1961, following an extensive period of active solicitation of plaintiff by defendants, and after being fully advised by plaintiff of its prospective plans to increase its production and sales from approximately 7,000 vehicles

during the year 1960 to approximately 24,000 vehicles per annum, defendants undertook and committed themselves to supply plaintiff's requirements of engine assemblies, transmissions, axles and certain other automobile components, including bulk replacement parts, for use in Checker taxicabs, private passenger automobiles and other vehicles produced by plaintiff; as an inducement to Checker to accept and rely upon their aforesaid undertakings and commitments, defendants further undertook to render various services to plaintiff and to sell to plaintiff, upon an agreed low price formula, certain of defendants' duplicate tools, dies and fixtures which were originally to be delivered for plaintiff's use in ample time for production of its 1962 models; and defendants also undertook to set forth all the commitments they had made to plaintiff in a formal agreement which plaintiff requested to protect the substantial investment it would incur in connection with its planned change-over to the use of products manufactured by defendants.

b) Defendants induced and caused plaintiff to act in reliance upon said undertakings and commitments and to commence re-engineering its automobile chassis and bodies for adaptation to said products manufactured by defendants and to construct, at plaintiff's sole cost and expense, a substantial number of prototype vehicles incorporating said products, which vehicles were then subjected by plaintiff at its own expense to an extensive experimental testing program. Defendants obtained substantial financial benefits from this construction and testing program carried out by plaintiff. Defendants also induced plaintiff to institute plans for an engineering and retooling program committing its future manufacturing operations to utilization of said products manufactured by defendants.

c) While plaintiff was taking the action hereinabove described, defendants deliberately and in bad faith protracted and delayed the preparation of a formal

agreement by various devices such as continually injecting into proposed drafts thereof extraneous or improper proposals; changing the nature of their original commitments after they had been reaffirmed; by postponing performance of their undertakings and commitments to plaintiff, including their commitment to deliver duplicate tools, dies and fixtures needed for the utilization of components produced by defendants in plaintiff's production; and by constantly assuring plaintiff that they would be performed. In so doing, defendants deliberately and in bad faith extracted unfair competitive advantages from the situation causing a substantial loss of momentum in plaintiff's sales, and a prolonged disruption of its production.

d) Various agents of defendants secretly and concurrently with the purported preparation of said formal agreement, solicited business from plaintiff's prospective and regular customers by disseminating reports that plaintiff proposed to use in its taxicabs a motor manufactured by defendants. This was done to induce said customers to purchase for taxicab use passenger automobiles manufactured by defendants rather than Checker taxicabs. At the same time, defendants misleadingly pretended to plaintiff that they desired said formal agreement to prohibit any public advertising by plaintiff of the fact that a motor manufactured by defendants would be used in Checker taxicabs.

e) Defendants have sold as so-called "taxicabs" their private passenger automobiles equipped for taxicab use by substituting for certain components thereof

similar units made for heavier duty and known as the "taxicab package", without any structural or body changes or adaptations to such automobiles which would render them functionally suitable for use as public conveyances. Sales of such so-called "taxicabs" have been made at unlawful, low and discriminatory prices by defendants through their agents and representatives, and defendants have used the leverage conferred by their vast size and multiplicity of operations to subsidize said sales, which are financed primarily out of the profits derived by defendants from their sales to the general public of private passenger automobiles.

f) Defendants have increased their share of the taxicab market substantially, particularly in the New York City market which is closely observed and followed by innumerable taxicab purchasers throughout the United States. Defendants' increased share of the taxicab market was secured by various unlawful acts committed by defendants and their co-conspirators, including the following:

(1) In combination with various of its dealers, defendants set up a scheme and device known as the "Commercial Fleet Value Program" (herein sometimes referred to as the "Chrysler Rebate Program") pursuant to which defendants and their co-conspirators unlawfully discriminated in prices between purchasers of defendants' passenger automobiles equipped with the so-called "taxicab package" and purchasers of said automobiles not so equipped.

(ii) Apart from the Chrysler Rebate Program, the suggested retail list prices of defendants' passenger automobiles sold for use as taxicabs were and are generally lower than the suggested retail list prices of automobiles of the identical make and model sold to the general public for use as private passenger cars, notwithstanding the fact that the automobiles sold as taxicabs include more costly extra items known as the "taxicab package".

(iii) Pursuant to the Chrysler Rebate Program, purchasers of more than one of defendants' automobiles sold for use as taxicabs received from defendants unlawful discounts consisting of a rebate of up to \$200 per automobile. These so-called "Fleet Taxicab Purchasers" also received substantial quantities of extra parts and accessories without charge of any kind and substantially broader warranties as to parts and labor than were customarily given to other fleet customers or retail customers.

(iv) Under the Chrysler Rebate Program the so-called "fleet discount" per vehicle accorded to purchasers of defendants' automobiles sold for use as taxicabs was and is arbitrary and unlawful. No cost justification or other rationalization exists therefor.

(v) The Chrysler Rebate Program was contrived solely to provide some semblance of justification for the unlawful course of discriminatory conduct embarked upon by defendants as part of their unlawful combination and conspiracy.

(vi) Even more flagrantly unlawful price discriminations than those explicitly provided for under such Program were and have been employed by defendants and their agents involving sales to established and prospective customers of plaintiff, including such devices and subterfuges as disguised rebates of various kinds; ostensible rental agreements for advertising space with certain taxicab purchasers; unwarrantedly high trade-in allowances for used taxicabs, particularly those manufactured by plaintiff, the dealers' loss, in such cases, being absorbed by defendants or by one of their subsidiary companies; and discriminatory and illegal re-purchase arrangements.

(vii) The aforementioned unlawful practices have been employed by defendants and their co-conspirators with particular frequency in New York City as a result of defendants' recognition that the greatest volume of taxicab sales usually takes place in New York City, and that domination by defendants of the New York City taxicab market, in addition to eliminating plaintiff as a substantial competitor, would be a valuable lever and selling point by which defendants could increase

their share of the passenger automobile market throughout the United States. The importance attached by defendants to dominating the New York City taxicab market as a means of furthering the sales of various of its passenger automobiles is shown by the extensive national advertising campaign defendants have constructed around its New York City taxicab sales. Said advertising campaign falsely and fraudulently represents to the public at large that many of defendants' passenger cars sold for use as taxicabs are "taxi-labs", whose performance can be meaningfully compared to defendants' private passenger car performance. Such advertising misleadingly omits any mention of the special, heavy duty "taxicab package" installed in the passenger cars equipped for use as taxicabs, which completely invalidates the comparison defendants purport to make between their passenger cars equipped for use as taxicabs and those not so equipped.

(viii) In respect of their passenger car sales, defendants have purported to broaden the scope of their warranty to a period of either five years or a driving distance of 50,000 miles, although defendants have misleadingly failed to disclose or make clear that a passenger automobile user must incur so much needless additional expense in qualifying to enforce this warranty as to make it economically worthless. Defendants, through their advertising campaign and other means, have utilized their successful expansion in the New York City

taxicab market, achieved by the unlawful means herein described, for the purpose of obtaining public acceptance of their deceptive warranty policy, thereby also furthering their scheme of eliminating plaintiff from competition in the sale of automobiles.

(ix) Defendants have caused rumors and reports, known to them to be false, to be disseminated among the drivers and operators of taxicabs in New York City to the effect that plaintiff is about to discontinue the manufacture of taxicabs.

15. The effect of the unlawful conduct herein referred to has been substantially to lessen competition in the line of commerce consisting of the manufacture and sale in interstate commerce of automobiles, including taxicabs.

16. Plaintiff has suffered and continues to suffer damages to its business and trade as a direct result of the unlawful combination, conspiracy, and acts herein alleged which have disrupted, delayed and severely curtailed plaintiff's production of automobiles, destroyed the momentum of its sales of passenger automobiles, caused plaintiff to lose many of its regular and prospective customers for its taxicabs, and threaten to do plaintiff further irreparable injury and harm.

17. By reason of the foregoing, plaintiff has been damaged in a sum in excess of \$15,000,000. Under Section 4 of the Clayton Act, plaintiff is entitled to injunctive relief against the continuance of the aforementioned unlawful practices.

WHEREFORE, plaintiff prays for the following relief:

(1) That defendants, their servants, agents, employees and any others in privity with them be enjoined pendente lite and permanently from continuing to conspire and to attempt to divert and destroy plaintiff's business and trade by any and all unlawful means; and

(2) That a judgment be entered against defendants in the sum of \$45,000,000, being three times the amount of plaintiff's damages; together with all the costs, including reasonable attorneys' fee and disbursements of this action, together with such other and further relief as to the Court may seem just and proper.

GALLOP CLIMENKO & GOULD

By: /s/ Jesse Climenko
A Member of the Firm

Attorneys for Plaintiff
Office & P.O. Address:
360 Lexington Avenue
New York 17, New York

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all the issues tendered by the foregoing Complaint, pursuant to Rule 38 of the Federal Rules of Civil Procedure.

GALLOP CLIMENKO & GOULD

By: /s/ Jesse Climenko
A Member of the Firm

165 a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
CHECKER MOTORS CORPORATION,

Plaintiff,

- against -

CHRYSLER CORPORATION and CHRYSLER
MOTORS CORPORATION,

Defendants.
-----X

: Civil Action
: File No. 886/1964
:

: ANSWER AND
: COUNTERCLAIM

ENTERED
FILED 5/11/65

Clary

Register

Chrysler Corporation and Chrysler Motors Corpora-
tion, for their answer to the complaint herein:

1. Deny the allegations set forth in paragraph

1.

2. Deny the allegations set forth in paragraph

2.

3. Deny the allegations set forth in the last
sentence of paragraph 3 and deny that they have knowledge
or information sufficient to form a belief as to the remain-
ing allegations set forth in paragraph 3 except that they
admit that plaintiff is a corporation organized under the
laws of the State of New Jersey.

4. Deny that they have knowledge or information
sufficient to form a belief as to the allegations set
forth in paragraph 4.

5. Deny the allegations set forth in paragraph
5 except admit that defendant Chrysler Corporation has been

a Delaware corporation since June 6, 1925 and has had agents and transacted business in the Southern District of New York since August 20, 1952 and that defendant Chrysler Motors Corporation has been a Delaware corporation since September 21, 1956 and has had agents and transacted business in the Southern District of New York since October 5, 1956.

6. Deny the allegations set forth in paragraph 6 except that they admit that defendant Chrysler Corporation has been engaged in the business of manufacturing and selling automobiles since 1925, that Chrysler Motors Corporation has been engaged in the business of selling automobiles in interstate commerce since October, 1956 and that defendant Chrysler Corporation reported in its Consolidated Statement of Net Earnings for the year 1963 sales over \$3,500,000,000 and net earnings over \$161,595,000.

7. Deny the allegations set forth in paragraph 7 except admit that at certain times each of the defendants have sold, apart from whole automobiles, one or more of the following items: engines and motors of various kinds, axles, transmissions, steering gears and other automobile components.

8. Deny the allegations set forth in paragraph 8.

9. Deny the allegations set forth in paragraph 9.

10. Deny the allegations set forth in paragraph 10.

11. Deny the allegations set forth in paragraph 11.

12. Deny the allegations set forth in paragraph
12.
13. Deny the allegations set forth in paragraph
13.
14. Deny the allegations set forth in paragraph
14.
15. Deny the allegations set forth in paragraph
15.
16. Deny the allegations set forth in paragraph
16.
17. Deny the allegations set forth in paragraph
17.

FOR A FIRST DEFENSE,
DEFENDANTS ALLEGE

18. The complaint fails to state a claim upon which relief can be granted.

FOR A SECOND DEFENSE,
DEFENDANTS ALLEGE

19. Any rights of action set forth in the complaint which did not accrue within the four years next before the commencement of this action are barred by the applicable statute of limitations.

FOR A THIRD DEFENSE,
DEFENDANTS ALLEGE

20. At all times mentioned in the complaint, new taxicabs and parts therefor and new private passenger

automobiles and parts therefor were and still are distributed by most manufacturers of the same through dealers who sold and sell only a limited number of brands or makes of new taxicabs and parts therefor and new private passenger automobiles and parts therefor and who generally sold and sell only the brands or makes of one manufacturer and said dealers were and are in competition with dealers who sold and sell the makes or brands of other manufacturers and with any manufacturers who sold and sell taxicabs and passenger cars manufactured by them directly to the users thereof.

21. Any prices, payments, considerations, services or facilities, offered or made or the contracting for any of them by the defendants, complained of by plaintiff herein, were and still are made in good faith to meet competition and the equally low prices, payments, considerations, services and facilities furnished, offered or made, or the contracting for any of them, by competitors.

FOR A FOURTH DEFENSE,
DEFENDANTS ALLEGE

22. Any prices, payments, considerations, services or facilities furnished, offered or made or the contracting for any of them by the defendants, complained of by plaintiff herein, were and still are made to give due allowance for differences in costs resulting from differing methods or quantities.

FOR A FIFTH DEFENSE,
DEFENDANTS ALLEGE

23. Plaintiff has come before this honorable court with unclean hands and is guilty of inequitable conduct which deprives it of any right to receive any of the relief demanded in its complaint. Such conduct is

illustrated by the matters set forth in the counterclaim hereinafter stated.

COUNTERCLAIM AGAINST PLAINTIFF CHECKER MOTORS CORPORATION AND ADDITIONAL DEFENDANTS, CHECKER TAXI COMPANY, INC., CAB SERVICE & PARTS CORPORATION, CHECKER MOTOR SALES CORPORATION, NATIONAL TRANSPORTATION COMPANY, INC., CHICAGO YELLOW CAB COMPANY, INC., PARMELEE TRANSPORTATION COMPANY, THE YELLOW CAB COMPANY OF PITTSBURGH, YELLOW TAXI COMPANY OF MINNEAPOLIS, YELLOW CAB COMPANY, AND MORRIS MARKIN

Upon information and belief, Chrysler Corporation and Chrysler Motors Corporation, as and for their counterclaim herein, allege:

1. Defendants Chrysler Corporation and Chrysler Motors Corporation have a claim against the plaintiff, Checker Motors Corporation, the adjudication of which does not require the presence of third parties over whom the Court hereir cannot acquire jurisdiction.

2. The additional parties defendant in connection with this counterclaim are Checker Taxi Company, Inc., Cab Service & Parts Corporation, Checker Motor Sales Corporation, National Transportation Company, Inc. and Chicago Yellow Cab Company, Inc., each of which are corporations organized and existing under the laws of the State of New York; Parmelee Transportation Company, a corporation organized and existing under the laws of the State of Delaware; The Yellow Cab Company of Pittsburgh, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania; Yellow Taxi Company of Minneapolis, a corporation organized and existing under the laws of the State of Minnesota; Yellow Cab Company, a corporation organized and existing under the laws of the State of Maine; and Morris Markin, a citizen of Michigan.

3. Defendants Chrysler Corporation and Chrysler Motors Corporation are corporations organized and existing under the laws of the State of Delaware and have their principal places of business in Detroit, Michigan. This counterclaim is filed under Section 15 and Section 26 of Title 15 of the United States Code in order to prevent and restrain continuing violations by the plaintiff, and the additional parties defendant, as hereinafter alleged, of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1, 2) and of Sections 2, 3 and 7 of the Clayton Act as amended (15 U.S.C. §§ 13, 14, 17) and to recover treble the damages suffered by defendants as a result of the violation of said laws by the plaintiff and the additional parties defendant.

4. The acts alleged in this counterclaim to have been done by the plaintiff and the additional corporate parties defendant were authorized, ordered or done by the officers, directors, agents or employees of said corporations while actively engaged in the management, direction or control of the affairs of said corporations. The additional defendant Markin has authorized, ordered or done acts constituting the offenses hereinafter alleged and has done acts in furtherance thereof. By virtue of Section 14 of the Clayton Act (15 U.S.C. § 24), the violations of the antitrust laws by the additional corporate parties defendant are deemed also to be violations by the individual directors, officers or agents of such corporations who authorized, directed, ordered or did any of the acts constituting such violations in whole or in part.

5. Plaintiff Checker Motors Corporation is a corporation organized and existing under the laws of the State of New Jersey and has its principal offices in Kalamazoo, Michigan. It is engaged in the manufacture and sale of taxicabs, private passenger automobiles and other vehicles and products. A substantial portion of the taxicabs manufactured and sold by plaintiff move in interstate commerce in a continuous flow from manufacturing plants to taxicab operators located throughout the United States.

6. The persons engaged in the manufacture or sale of taxicabs in the United States are and at all relevant times herein have included a number of corporations, amongst others, General Motors Corporation, Ford Motor Company, Studebaker Corporation, American Motors Corporation, Checker Motors Corporation and Chrysler Corporation. Each of said corporations also manufactures and offers for sale private passenger automobiles.

7. Each manufacturer and seller of taxicabs is in active competition with other manufacturers and sellers of taxicabs for the business of taxicab operators throughout the United States except as competition has been restrained, suppressed, foreclosed and lessened by plaintiff and the additional parties defendant herein, as hereinafter set forth.

8. "Taxicabs", as used herein, refers to motor vehicles used by fleet operators or individual owners for the purpose of offering to the general public transportation of passengers for hire on a per trip basis.

9. "Private Passenger Automobiles", as used herein, refers to motor vehicles used by the general public for the purpose of providing private passenger transportation.

10. For many years and at all relevant times herein, Morris Markin owned and controlled and still owns and controls 100% of the outstanding voting stock of Checker Taxi Company, Inc.

11. Checker Taxi Company, Inc. and Morris Markin together own approximately 45.79% of the outstanding voting stock of Checker Motors Corporation. For many years and at all relevant times herein, said Checker Taxi Company, Inc. and Morris Markin have owned or controlled a substantial proportion of the outstanding voting stock of Checker Motors Corporation. By virtue of these stockholdings and through various other companies owned or controlled by them (including Chicago Yellow Cab Company, Inc. which owns and controls and for many years and at all relevant times herein owned and controlled approximately 7.55% of the outstanding voting stock of Checker Motors Corporation) Checker Taxi Company, Inc. and Morris Markin for many years and at all relevant times herein controlled Checker Motors Corporation.

12. For many years and at all relevant times herein, Checker Motors Corporation owned and controlled and still owns and controls approximately 100% of the outstanding voting stock of Cab Service & Parts Corporation.

13. For many years and at all relevant times

herein Checker Motors Corporation owned and controlled and still owns and controls 100% of the outstanding voting stock of Cab Service and Parts Corporation which in turn owns and controls and for many years and at all relevant times herein owned and controlled Checker Motor Sales Corporation.

14. Checker Motors Corporation owns and controls approximately 63.04% of the outstanding voting stock of Parmelee Transportation Company. For many years and at all relevant times herein said Checker Motors Corporation and Morris Markin directly or indirectly owned and controlled a sufficient number of shares of the voting stock of Parmelee Transportation Company to control said Parmelee Transportation Company.

15. Parmelee Transportation Company owns and controls and for many years and at all relevant times herein owned and controlled 100% of the outstanding voting shares of National Transportation Company, Inc., The Yellow Cab Company of Pittsburgh, Yellow Taxi Company of Minneapolis and a number of other companies engaged in the business of providing material and services to taxicab operators. Through its subsidiaries Parmelee Transportation Company is one of the largest owners and operators of taxicabs in the United States.

16. Checker Motors Corporation owns and controls approximately 54.79% of the outstanding voting stock of Chicago Yellow Cab Company, Inc. For many years and at all relevant times herein said Checker Motors Corporation and Morris Markin directly or indirectly owned and controlled a sufficient number of shares of the voting stock of

Chicago Yellow Cab Company, Inc. to control said Chicago Yellow Cab Company, Inc.

17. Plaintiff and the additional defendants have for many years and now still own and control the overwhelming proportion of taxicabs licensed to operate in Chicago, Illinois. Chicago Yellow Cab Company, Inc. owns and controls and for many years and at all relevant times herein owned and controlled 100% of the outstanding voting stock of Yellow Cab Company. For many years and at all relevant times herein Chicago Yellow Cab Co., Inc. has been the owner and operator of a large number of taxicabs in the City of Chicago. In addition to the taxicabs owned and operated by Yellow Cab Company in Chicago, Illinois, Checker Taxi Company, Inc. also owns and operates a large number of taxicabs in Chicago, Illinois and for many years and at all relevant times herein has been the owner and operator of a large number of taxicabs in the City of Chicago, Illinois. For many years and at all relevant times herein companies owned or controlled by Morris Markin or companies which in turn are controlled by him or by other companies which are controlled by him have been and still are dominant owners and operators of taxicabs in Chicago, Illinois.

18. Yellow Taxi Company of Minneapolis, Inc. owns and operates the overwhelming proportion of taxicabs licensed to operate in Minneapolis, Minnesota and for many years and at all relevant times herein has been the owner and operator of a large number of taxicabs in the City

of Minneapolis, Minnesota. For many years and at all relevant times herein companies owned or controlled by Morris Markin or companies which in turn are controlled by him or by other companies which are controlled by him have been the dominant owners and operators of taxicabs in Minneapolis, Minnesota.

19. Yellow Cab Company of Pittsburgh, Inc. owns and operates the overwhelming proportion of taxicabs licensed to operate in Pittsburgh, Pennsylvania and for many years and at all relevant times herein has been the owner and operator of a large number of taxicabs in the City of Pittsburgh, Pennsylvania. For many years and at all relevant times herein companies owned or controlled by Morris Markin or companies which in turn are controlled by him or by other companies which are controlled by him have been the dominant owners and operators of taxicabs in Pittsburgh, Pennsylvania.

20. For many years National Transportation Co., Inc. owned and operated taxicabs in New York, New York. At one time this company owned and operated a great proportion of the taxicabs licensed to operate in the City of New York and for many years and at all relevant times herein until early 1962 it was the owner and operator of a large number of taxicabs operated in that city. For many years and at all relevant times herein until early 1962 companies owned or controlled by Morris Markin or companies which in turn are controlled by him or by other companies which are controlled by him have been the dominant owners and opera-

tors of taxicabs in New York City.

21. The purchase of taxicabs for use by National Transportation Company, Inc., Parmelee Transportation Company, Yellow Cab Company of Pittsburgh, Inc., Yellow Taxi Company of Minneapolis, Inc., Yellow Cab Company and Chicago Yellow Cab Company, Inc. and other taxicab owners and operators is and for many years and at all relevant times herein was controlled, influenced and dominated by Morris Markin. Said Morris Markin used and is using his control, influence and domination over the aforesaid taxicab operating companies to require said companies to purchase taxicabs manufactured by Checker Motors Corporation, which corporation, as heretofore related, is and for many years and at all relevant times herein was also controlled, influenced and dominated by said Morris Markin thereby foreclosing to other companies engaged in the business of manufacturing and selling taxicabs substantial markets for their products.

22. In the City of New York, the number of taxicabs is limited by law. The right to operate a taxicab in New York City requires the ownership of a license which is evidenced by a metal emblem, called a medallion, which is rivetted to the hood of the taxicab by the police department of the City of New York. Similar limitations on the right to operate a taxicab exist in other municipalities throughout the United States.

23. In New York City and other municipalities there are various restrictions as to the persons who may

own or operate taxicabs and as to the specifications or dimensions of vehicles which may be used as taxicabs.

24. From time to time National Transportation Company, Inc., sold certain of its medallions to other taxicab fleet operators in New York City until in early 1962 the last of such medallions was sold.

25. Morris Markin has threatened to purchase or have companies controlled by him again acquire taxicab medallions in New York City in substantial number so that he may once more directly control a substantial number of taxicabs operated in New York City.

26. For many years and continuing up to the date of the filing of this counterclaim, Morris Markin, Checker Taxi Company, Inc., Checker Motors Corporation, Cab Service & Parts Corporation, Checker Motor Sales Corporation and Parmelee Transportation Company and others have illegally combined, conspired and agreed to cause the taxicab operating companies which they control, influence or dominate and others to purchase taxicabs made by Checker Motors Corporation at prices manipulated by Morris Markin and plaintiff instead of permitting these operating companies to purchase taxicabs from other manufacturers and sellers which would be more in the economic interests of the operating companies and, ultimately, the public.

27. For many years and continuing up to and including the date of filing of this counterclaim, the additional parties defendant and Checker Motors Corporation have been and now are engaged in a combination and conspiracy to restrain and monopolize interstate trade and commerce in the sale of taxicabs to the principal and other

taxicab owners and operating companies in Chicago, Illinois, Pittsburgh, Pennsylvania and Minneapolis, Minnesota and elsewhere in violation of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1, 2) to the great damage of Chrysler Corporation and Chrysler Motors Corporation and other manufacturers and sellers of taxicabs and said parties threaten to continue such offenses and will continue them to the great damage of Chrysler Corporation and Chrysler Motors Corporation and other manufacturers and sellers of taxicabs unless the relief hereinafter prayed for in this counterclaim is granted.

28. Up to the date of the sale of its last medallions by National Transportation Co., Inc. in early 1962, Checker Motors Corporation and the additional parties defendant have been engaged in a combination and conspiracy to restrain and monopolize interstate trade and commerce in the sale of taxicabs to the principal taxicab operating companies and other taxicab owners and operators in New York City in violation of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1, 2) to the great damage of Chrysler Corporation and Chrysler Motors Corporation and other manufacturers and sellers of taxicabs and said parties threaten to resume such offenses and will resume them to the great damage of Chrysler Corporation and Chrysler Motors Corporation and other manufacturers and sellers of taxicabs unless the relief hereinafter prayed for in this complaint is granted.

29. (a) The aforesaid combination and conspiracy to restrain and to monopolize has consisted of a continuing agreement and concert of action among the plaintiff and the additional parties defendant and others, the substantial terms of which have been that each Markin-

dominated taxicab operating company will purchase and use in its operations only those taxicabs manufactured by Checker Motors Corporation and will not purchase taxicabs manufactured by other manufacturers and each Markin-dominated taxicab operating company will pay for such taxicabs a price fixed by Checker Motors Corporation, Morris Markin, and Checker Taxi Company, Inc., which price has been in excess of the fair market price and which price is not determined by competitive market forces but is a non-competitive price manipulated by Checker Motors Corporation, Morris Markin and Checker Taxi Company, Inc. Said combination and conspiracy has been formed and effectuated by means of the control, influence and domination exercised over the policies and operations of the various companies by Morris Markin and companies whose policies and operations he controls, influences or dominates and by the use of interlocking personnel.

(b) In addition, Morris Markin, Checker Motors Corporation, Cab Service & Parts Corporation, Checker Motor Sales Corporation and various other persons have conspired and continue to conspire to restrain trade and monopolize the business of selling taxicabs in many municipalities in the United States, through influencing public officials to adopt or construe local ordinances and rules so that only taxicabs manufactured by Checker Motors Corporation and sold by Checker Motor Sales Corporation or operated by companies or individuals owned or affiliated, directly or indirectly, with the defendants upon this counterclaim or subject to their influence or domination could be employed in the said municipalities. In furtherance of said conspiracy, Morris Markin has had numerous conversations with

people of influence in taxicab operations in New York City wherein he has attempted to achieve a monopoly for taxicabs manufactured and sold by companies controlled by him and has offered to spend \$2,000,000 to reach that end and Checker Motor Sales Corporation has caused false and misleading advertising to be placed in newspapers of wide circulation, untruthfully describing the taxicab manufactured by Checker Motors Corporation and sold by Checker Motor Sales Corporation and untruthfully describing the taxicabs manufactured and sold by other taxicab manufacturers and sellers.

(c) Morris Markin and various other persons, including labor union organizers and officials of labor unions, have conspired and continue to conspire to restrain trade and monopolize the business of selling taxicabs in many municipalities in the United States by seeking to influence labor union organizers and officials and by threatening taxicab operators with labor difficulties unless they purchase taxicabs manufactured by Checker Motors Corporation and sold by Checker Motor Sales Corporation, by causing taxicab operators to have labor difficulties who refuse to purchase such taxicabs and by offering to obtain and obtaining for taxicab operators, in exchange for their purchasing taxicabs manufactured by Checker Motors Corporation and sold by Checker Motor Sales Corporation, no unionization of their employees or exceedingly favorable labor contract terms.

(d) Morris Markin through or with plaintiff or one or more of the corporate defendants on this counterclaim

has offered and given and caused to be offered and given financial and other assistance to taxicab owners and operators on the condition, agreement or understanding that the taxicab owner or operator would purchase taxicabs made by Checker Motors Corporation from Checker Motor Sales Corporation and would not purchase taxicabs from other manufacturers or sellers and has conspired and threatened to fail to renew loans or to enforce the terms of loans or to withdraw financial and other assistance to taxicab owners or operators if they purchased competitive taxicabs notwithstanding that the taxicabs made by Checker Motors Corporation were more expensive to purchase, operate and maintain, were less durable and were far less satisfactory in performance than the taxicabs manufactured and sold by other taxicab manufacturers.

30. The aforesaid combination and conspiracy have had as intended by Checker Motors Corporation and the additional parties defendant herein the following effects, among others:

(a) Competition for the business of selling taxicabs to the principal taxicab operators in New York City (until early 1962), Chicago, Illinois, Pittsburgh, Pennsylvania, Minneapolis, Minnesota and to taxicab operators elsewhere in the United States has been eliminated and Chrysler Corporation and Chrysler Motors Corporation as well as other manufacturers or sellers of taxicabs have been improperly excluded from and deprived of the opportunity of fairly competing for such substantial business;

(b) The prices paid for taxicabs by the principal taxicab operating companies in New York City, Chicago, Illinois, Pittsburgh, Pennsylvania and Minneapolis, Minnesota and taxicab operators elsewhere in the United States have been unlawfully controlled and fixed without regard to normal competitive forces or conditions; and

(c) Undue and unlawful restraints have been and now are being imposed upon the business of manufacturing and selling taxicabs for and in New York City, Chicago, Illinois, Pittsburgh, Pennsylvania, Minneapolis, Minnesota and elsewhere in the United States.

31. Morris Markin, Checker Taxi Company, Inc. and Checker Motors Corporation, through their control over Parmelee Transportation Company and National Transportation Company, Inc. have promised and offered and have caused National Transportation Company, Inc. to promise and to offer to sell medallions to fleet taxicab operators in New York City in numbers not otherwise readily available or at prices below the then market price for said medallions on the condition, agreement or understanding that the purchaser would purchase taxicabs made by Checker Motors Corporation from Checker Motor Sales Corporation and would not purchase taxicabs from other manufacturers or sellers and National Transportation Company, Inc. has in fact made many separate sales of medallions on such condition, agreement or understanding, all to the great damage of Chrysler Corporation, Chrysler Motors Corporation and other taxicab manufacturers and sellers and all in violation of Section

3 of the Clayton Act as amended (15 U.S.C. § 14) and Section 1 of the Sherman Act (15 U.S.C. §1).

32. Morris Markin, Checker Motors Corporation, Cab Service & Parts Corporation and Checker Motor Sales Corporation have unfairly and illegally caused fleet purchasers of taxicabs in New York City to purchase taxicabs manufactured by Checker Motors Corporation and sold by Checker Motor Sales Corporation and not to purchase taxicabs manufactured or sold by other manufacturers or sellers by threatening and informing said purchasers and prospective purchasers of taxicabs that if competitive taxicabs were purchased said purchaser or prospective purchaser would no longer be considered as a prospective purchaser of medallions then owned by National Transportation Company, Inc., all to the great damage of Chrysler Corporation, Chrysler Motors Corporation and other taxicab manufacturers and sellers and all in violation of said Section 3 of the Clayton Act as amended and said Section 1 of the Sherman Act.

33. For many years and at all relevant times herein Checker Motors Corporation and Checker Motor Sales Corporation (1) have offered for sale and sold taxicabs at unlawful and discriminatory prices to different purchasers in competition with one another (2) have offered and granted to favored taxicab customers extra or special parts and equipment not offered or granted to competing purchasers of taxicabs and (3) have offered and allowed extended warranty and other services to favored taxicab purchasers without offering or granting the same or similar services to all purchasers on proportionally equal terms, all to the great

damage of Chrysler Corporation, Chrysler Motors Corporation and other manufacturers, sellers and operators of taxicabs and all in violation of Section 2 of the Clayton Act as amended by the Robinson-Patman Act (15 U.S.C. § 13).

34. Beginning in 1929 and continuing thereafter up to and including the date of the filing of this counterclaim, the additional parties defendant herein, by virtue of their interconnections and the effect of their interconnections, as hereinabove set forth, have engaged in an unlawful combination in unreasonable restraint of interstate trade and commerce in taxicabs in violation of Section 1 of the Sherman Act (15 U.S.C. § 1). The aforesaid interconnections have resulted in large part from the acquisition of the stock or share capital of one corporation by the other. The effect of said acquisitions of stock and said interconnections of the businesses of the additional parties defendant herein may be substantially to lessen competition or to tend to create a monopoly in violation of Section 7 of the Clayton Act as amended (15 U.S.C. § 17), in the ways, among others, set forth in paragraph 30 above.

35. By reason of the unlawful acts of Checker Motors Corporation and the additional parties defendant herein complained of, and as a result of said conspiracy and combination to restrain and monopolize interstate trade and commerce in the manufacture and sale of taxicabs, Chrysler Corporation and Chrysler Motors Corporation have been injured and damaged in their business and property in sums which are substantial and not fully determined.

36. The aforesaid conspiracy and unlawful acts are continuing and will continue to cause irreparable loss and damage to Chrysler Corporation and Chrysler Motors Corporation and to other taxicab manufacturers and sellers and the public unless equitable relief is granted. No complete and adequate remedy at law exists.

WHEREFORE, defendants Chrysler Corporation and Chrysler Motors Corporation demand:

(1) Judgment in their favor dismissing the complaint and awarding them the costs and disbursements of this action including reasonable attorneys' fees.

(2) Judgment in their favor on the counterclaim:

(a) That a judgment be entered against the additional parties defendant in a sum equal to three times the amount of the damages suffered by the counterclaimants together with all costs, including reasonable attorneys' fees and disbursements;

(b) that the additional parties defendant, their officers, directors, employees, agents and others in privity with them be enjoined pendente lite and permanently from continuing their illegal conspiracy and acts;

(c) that plaintiff and the additional defendant Morris Markin be enjoined during the pendency of this action and permanently from retaining directly or indirectly any interest in or control over or exercising any influence in or domination over National Transportation Company, Inc., Chicago Yellow Cab Company, Inc., Parmelee

Transportation Company, The Yellow Cab Company of Pittsburgh, Yellow Cab Company and Yellow Taxi Company of Minneapolis or any other company, firm or organization directly or indirectly having control over the operation of taxicabs;

(d) that the additional corporate defendants be enjoined during the pendency of this action and permanently from retaining directly or indirectly any interest in or control over or exercising any influence in or domination over each other to the end that the taxicab manufacturing and selling companies or their holding companies, to wit, Checker Taxi Company, Inc., Checker Motors Corporation, Cab Service & Parts Corporation, and Checker Motor Sales Corporation be completely divorced from and without any means to control, influence or dominate directly or indirectly any other taxicab operating company or their holding companies, including National Transportation Company, Inc., Chicago Yellow Cab Company, Inc., Parmelee Transportation Company, Yellow Cab Company, The Yellow Cab Company of Pittsburgh and Yellow Taxi Company of Minneapolis, and that the Markin-dominated taxicab operating companies or their holding companies likewise be completely divorced from and without any means to influence, dominate or control directly or indirectly any taxicab manufacturing or selling company or their holding companies;

(e) that each additional corporate defendant be enjoined during the pendency of this action and permanently from hereafter acquiring directly or indirectly any interest or influence in, domination or control over

187 a

any other company, firm or organization engaged in the business of the group other than its own as stated in the preceding paragraph; and

(f) that the counterclaimants have such further, general and different relief as the nature of the case may require and the Court may deem proper in the premises.

Kelley Drye Newhall Maginnes &
Warren
Attorneys for Defendants
Chrysler Corporation and
Chrysler Motors Corporation

350 Park Avenue
New York, New York 10022

By _____
A member of the firm

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

CHECKER MOTORS CORPORATION,	:	
Plaintiff,	:	
- against -	:	64 Civ. 866
CHRYSLER CORPORATION and	:	
CHRYSLER MOTORS CORPORATION,	:	AFFIDAVIT
Defendants,	:	PURSUANT TO
	:	<u>RULE 56(f)</u>
CHECKER TAXI COMPANY, INC. et al.,	:	
Additional Fedendants	:	
on Counterclaim.	:	

----- x

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

ROBERT EHRENBARD, being duly sworn, deposes and says:

I am a member of the law firm of Kelley Drye Newhall Maginnes & Warren, attorneys for defendants Chrysler Corporation and Chrysler Motors Corporation, and make this affidavit pursuant to Rule 56(f) of the Federal Rules of Civil Procedure in opposition to plaintiff's motion said to be for "partial summary judgment" and injunctive relief. At this point, without even going into the factual and legal defects of the merits of Checker's present claims, it should be noted that the present motion is defective because, as more fully developed in defendants' accompanying Memorandum of Law (Memorandum), there is no such motion as one for "partial summary judgment", as pre-

sented here, upon events such as now sought to be adjudicated postdating and having nothing to do with the events alleged and legal basis advanced in the pleadings, and injunctive relief is belatedly sought about practices that have been discontinued.

These procedural defects are pointed out because they dramatically illustrate how drastically Checker has changed the nature of its claim and how therefore defendants face this motion without meaningful discovery. Checker's complaint served April, 1964 alleged a conspiracy by defendants to injure Checker as a competitor in violation of the Sherman Act. Accordingly, the bit of discovery defendants have been able to obtain to date has naturally been devoted to the issues raised by the complaint--all occurring prior to the filing of the complaint in 1964. Now, after repeated failures to comply with orders of this Court concerning discovery, as developed below, and having also deprived defendants of an opportunity to depose Morris Markin, author of Checker's moving affidavit here and described by Checker as the "key man" in its empire, Checker made this motion on the basis of events occurring in 1966 and 1967, seeking to have this Court adjudicate a far reaching and completely new claim in a vacuum and deprive defendants of an opportunity to discover and present to the Court the relevant facts, both as to plaintiff's case and defendants' defense.

To briefly review, although defendants noticed Mr. Markin's deposition for April 20, 1964, it was not until over a year later, after having obtained thirteen ad-

Journalments, that he was even produced. Then, on the very first day of the taking of testimony, plaintiff's counsel interposed, in the first 2 1/2 hours, almost 100 objections and after preventing and frustrating any real questioning, completely deprived defendants of an opportunity to depose Mr. Markin by obtaining an order directing defendants to pursue discovery in this action through written interrogatories. However, after defendants proposed these interrogatories on June 17, 1965, less than two weeks after plaintiff suggested them, Checker set up no less than 103 pages of objections, directed to almost every one of defendants' interrogatories, raising almost every ground ever conceived under the Federal Rules. At the same time, Checker chose to give a few answers to which defendants were forced to object, because of their woeful inadequacy. (Plaintiff's Answers to Defendants' Interrogatories, sworn to on September 20, 1965.) These stumbling blocks were finally disposed of by then Chief Judge Ryan, who overruled over 90% of Checker's objections and required further answers to the few questions that Checker had purported to answer. Then almost a year after the Chief Judge required plaintiff to give satisfactory answers, Checker again served a set of answers which were unresponsive and vague in the extreme. (Plaintiff's Additional and Supplemental Answers to Defendants' Interrogatories, sworn to on March 8, 1967.) Defendants promptly moved to obtain proper answers, and were met with the present motion for "partial" summary judgment seeking declaratory and injunctive relief. Judge Ryan stayed plaintiff's motion until after a proper set of answers to defendants' interrogatories were served. Indeed, under or-

der dated July 26, 1967 Judge Ryan sustained defendants' exceptions to all but three of plaintiff's inadequate answers, directed further answers to 66 interrogatories, and struck certain allegations from plaintiff's complaint. Plaintiff thereafter purported to comply with this order by serving another set of answers (Plaintiff's Further Answers to Defendants' Interrogatories) which were again deficient (as acknowledged by plaintiff's attorneys) and defendants are currently attempting to obtain full compliance with the Court's order of July 26, 1967 and obtain answers to interrogatories served well over two years ago. Thus, although the action has been pending for more than three years, defendants have been prevented from taking a single deposition and with motion after motion has still not obtained complete answers to its first set of interrogatories. In addition, faced with the pressure of this motion, defendants have not been able adequately to assess and utilize the material and discovery which they seem to have finally obtained from plaintiff and therefore must face this motion in effect without the benefit of full or meaningful discovery in plaintiff's original \$45,000,000 antitrust suit or any discovery at all on their current claims first raised by this motion.

Returning to the affidavit of Morris Markin, whose deposition defendants have been deprived of, a mere perusal reveals important factual contentions that demand careful investigation and the absolute necessity of defendants taking his deposition to properly defend this motion. For example, Mr. Markin swears that Checker is Chrysler's

"only major competitor in the taxicab field" (p. 5) and that "General Motors and Ford have shown no strong interest in the taxicab field" (p. 10) apparently attempting, in a breath, to deprive defendants of the defense of meeting competition (Defendants' Memorandum of Law, Point II F.) and eliminate these giant manufacturers and competitors of Chrysler from the market in which injury to competition must be judged, which is another way of stating its erroneous legal premise that injury to it is tantamount to injury to competition. By chance, because of other issues raised in the original complaint, we can show that contrary to this sworn statement is Mr. Markin's letter of April 13, 1966 (a copy of which is annexed hereto as Exhibit "A", obtained from plaintiff in response to Interrogatory No. 15) in which he complains to General Motors that his "competitors in the cab field [have] established a factory rebate of \$200 on all cab sales..." Indeed, Mr. Markin's sworn statement on this motion is further belied by plaintiff's Registration Statement of 1958 filed with the Securities and Exchange Commission (annexed hereto as part of their Listing Application to the New York Stock Exchange as Exhibit "B") wherein it stated that "sales of [Checker's] taxicabs are made in competition with sales of stock passenger cabs produced by all other domestic automobile companies and adopted for taxicab use" (p. 15). Further, as the affidavits of Messrs. Musico and Lefkowitz reveal, these large New York City taxicab operators have been offered (and received) payments from defendants' larger competitors that exceed the amount offered by Chrysler under

its "Value Program for Commercial Fleet Owners" (Program). This is confirmed by a Ford advertisement appearing in the "New York Hackman" on March 24, 1966 (annexed hereto as Exhibit "C", produced by plaintiff again by chance in response to Interrogatory No. 74 dealing with another matter) telling customers that Ford's rebates are "deducted immediately" and that as an "EXTRA" Ford, through its dealers, "offers fleet prices to taxicab owners and taxicab drivers" on new as well as used cars. Furthermore, our attorneys' investigation (as much as could be made in the brief period available) uncovered information as to a Ford "Guaranteed Depreciation Plan" for fleet and leasing companies which, I understand, has changed over the years but, in substance, is comparable to Chrysler's Program and has offered free equipment or a guaranteed resale value.

In this regard, Mr. Markin and Checker have also failed to give the Court the actual sales figures for taxicabs in New York City in 1966 and 1967, the years and the geographical "market" it has "chosen" for this motion. (Its choice of the geographical area is plainly specious, see Defendants' Memorandum of Law, II G.(1)). These figures reveal that while Chrysler's share of the market was dropping almost 30%, General Motors nearly trebled and Ford garnered almost 30% of market of new cab sales in 1967. In short, under these circumstances, substantial factual questions exist and discovery needed from both plaintiff and third parties on the competitive practices in the industry, defendants' defense of good faith meeting competi-

tion and what alleged effect, if any, defendants' Program has had on competition.

Also in this vein is the important question of the product market and geographic area in which the question of injury to competition must be judged. Checker, although complaining of defendants' plan--which is admittedly applied on a uniform basis throughout the United States (Plaintiff's Memorandum of Law, p. 10) and in the "800 cities" in which Checker sells its cabs--has "limited" its claim here to what Mr. Markin swears is the "New York City Market" and further limits it to the "taxicab" market in this city. However, as fully developed in Point II G.(1) of Defendants' Memorandum, the United States Supreme Court could well find here a national market for the purposes of determining injury to competition or, at the least, compel a full factual analysis to determine this issue. Indeed, plaintiff itself has elsewhere sworn "that only one taxicab market exists and said market encompasses the entire United States of America..." (Plaintiff's Further Answers to Defendants' Interrogatories, No. 63(a)). And while Mr. Markin swears (p. 2) without any factual showing or sales figures, that Checker has lost about 80% of its major "market" and "substantial sales elsewhere", its sworn answers to Interrogatory No. 23 reveals that in the period 1962 to 1965 plaintiff acquired no less than 2,201 new customers on a nationwide basis (Plaintiff's Further Answers to Defendants' Interrogatories). Of course, defendants do not have the figures for 1966 and 1967 from Checker--the years complained of on this motion--since, the Interroga-

tories spoke only as of 1965, the year they were served and, even more importantly, the nationwide picture as to competition in the industry, including Ford and General Motors, has not yet even begun to be developed.

Another important factual area and showing totally absent from plaintiff's papers is the "effect on price", if any, of defendants' plan under plaintiff's Sherman Act claim and the "discrimination in price" as between two actual purchasers under the Robinson-Patman branch of its claim. Apparently, plaintiff seeks to cover these crucial elements with the conclusory and utterly unsupported statement that defendants' "specially-equipped taxicab vehicles are sold to their purchasers at a lower net price than identical model pleasure cars." (Markin affidavit, p. 10) However, as the affidavit of R. J. Longdon shows, Chrysler markets its cars through independent dealers who are free to sell and do sell Chrysler products to consumers at whatever prices the market will bear. Chrysler does not sell to any such "purchaser" or establish any price paid by him. Accordingly, the question as what effect, if any, the Chrysler payment has on the ultimate price paid would involve consideration of the acts of literally thousands of independent businessmen. It may well be that the \$183 sum has no effect on the price paid by the purchaser (the dealer merely raising his otherwise price, this amount) and that the mistakenly so-called "identical taxicabs and cars" are sold at the same prices or taxicabs are sold at a higher price, etc. And while de-

defendants feel that under the law, as developed in their Memorandum, this factual question need not be reached, if the Court should disagree, this is simply another area where the facts must be discovered and plaintiff must make a prima facie showing before defendants should be obliged to undertake this burden.

Another important aspect of plaintiff's claim that demands investigation is whether Checker is in "competition" with defendants, or for that matter, Ford, General Motors and American Motors. Although characterized and sworn by Morris Markin (affidavit, p. 1) to be a "manufacturer" of taxicabs, the description is erroneous. As can be seen from Plaintiff's Further Answers to Interrogatories (No. 14), Checker is not a manufacturer, as are General Motors, Ford, Chrysler and American Motors but merely an "assembler", piecing together its vehicle with the products of literally scores of suppliers, with consequential excessive production and overhead costs, which would appear to remove plaintiff from the real competitive picture. Indeed, as Mr. Markin stated on his abruptly terminated deposition: "We don't build a motor or such, or axles or transmissions, wheels, brakes, frames, shafts and we don't know what the cost will be on this." (TR. 304) It is for this reason, among others, that plaintiff states in its 1958 Registration Statement filed with the Securities and Exchange Commission (annexed hereto as Exhibit "B") that its manufacturing operations "have not been profitable in recent years" (p. 13) and the fact of the matter is that upon discovery of plaintiff it would be demonstrated that by the time plaintiff's

assembly is completed and before making one cent of profit, Checker has itself paid a complete manufacturer's profit, which indicates that it must sustain an operating loss in a true and unfettered market. Indeed, its Registration Statement reveals that in many years its costs of raw materials alone exceeded its revenues from selling its product and that it is kept in business by the large profits pumped in by the heart of its combine, its subsidiary, Parmelee Transportation Co. Indeed, Checker states in its Registration Statement that a "substantial part" of its taxicab market consists of sales "to operating subsidiaries" (p. 14), who themselves have complained that Markin has

"...caused the Operating Corporations to purchase taxi cabs from Checker, at prices in excess of the prices for which these Operating Corporations could purchase taxi cabs from other manufacturers, which were better designed for their purpose and which were cheaper to operate and maintain. Moreover, Checker charged these Operating Corporations prices in excess of the prices charged by it to purchasers not under its control and domination."

(Orphanos v. Markin, et al., Sup. Ct., New York County, No. 6374/58, Complaint, para. 27.) In short, if permitted to develop the facts from the only possible source of this information, plaintiff, it could be shown that plaintiff's "manufacturing" operations are inherently unprofitable, continue solely to satisfy Morris Markin's dream to build automobiles, exist solely by virtue of the profits poured in from its diversified subsidiaries, in no sense is a competitor of defendants or defendants' larger competitors, General Motors or Ford, and that even if Chrysler were to

go out of business tomorrow, Checker could not profitably compete with General Motors or Ford.

Another critical area which demands further factual analysis is the true cause of Checker's alleged competitive problems. While plaintiff swears, without a shred of factual support, that it has lost sales due to Chrysler's Program, interviews with the few New York City taxicab fleet operators that our attorneys have been able to obtain in the brief period available, reveal that nothing could be further from the truth. Messrs. Lefkowitz, Levine and Musico all swear--categorically--that they would not purchase a Checker cab even if Chrysler did not have the Program complained of and that they would still prefer and purchase the Chrysler over the Checker. These men also have stated that, if asked, their fellow operators would reply no differently.

The reason for their statements is easy to understand. While Mr. Markin swears that Checker's cab is "purpose-built", (Markin affidavit, p. 1) the fact of the matter is that Checker's cab is admittedly outdated before it is even marketed (See Exhibit "D", annexed hereto), ignoring the post-war trend of all automobile manufacturers toward smaller, more efficient, and more stylish taxicabs. For example, Mr. Levine swears that his drivers were dissatisfied with the "unwieldy" Checker, causing driver fatigue and accidents. Mr. Musico explains how Checker cheapened its cab in recent years, finding "horrible" problems with the transmission, brakes, hoods, seats, doors and

top-lights, and then a refusal to honor their warranty or replace parts when called upon to make good. Furthermore, these gentlemen swear that the Chrysler taxicab is far more economical, saving them large amounts in gas consumption alone as compared with the Checker vehicle. Indeed, Mr. Lefkowitz who "switched" to Ford flatly states that it cost him \$1,000 to \$1,500 more a cab a year to operate the Checker. There is every reason to believe that the remaining purchasers, which time did not permit interviews with, who allegedly "switched" to the Chrysler taxicab (and those of Chrysler's larger competitors), would swear no differently. Indeed, the problems that Checker has been experiencing with its obsolete product and the consequential loss of customers is confirmed by plaintiff's own letters and intra-office correspondence obtained in response to Interrogatory No. 15 and more fully developed in defendants' accompanying Memorandum of Law (annexed hereto as Exhibits "E", "F", "G", "H" and "I"). Apart from discovery from third persons, these few documents produced in response to an Interrogatory which was directed to another aspect of plaintiff's original claim, indicate defendants' need to fully develop from plaintiff exactly what problems it was and is encountering with its product, and the extent of customer dissatisfaction and loss that they admittedly caused.

Another crucial aspect of plaintiff's claim that bears investigation is the extent to which Checker's loss of its captive market bears on its overall claimed loss of sales. As noted more fully in defendants' Memorandum of

Law, under impetus from the Government's suit against the Checker empire (U.S. v. Yellow Cab Co., 332 U.S. 218), beginning in 1953 and continuing into the 1960s, Checker's wholly owned operating subsidiary in New York City (National Transportation Co.) began a systematic disposition of its medallions. (Additional Answers, No. 29.) Of course, in view of the fact that Checker's national sales have remained constant (excluding New York City, Memorandum p. 29), and Chrysler's complained of Program is a national plan uniformly applied throughout the country, the loss of these 1,600 automatic taxicab sales in New York City goes a long way in explaining Checker's decreasing sales in New York City in the 1960s as compared to the 1950s. But this just begins to tell the story.

As it appears from the affidavit of Morris Lefkowitz, one of the largest taxicab operators in New York City, Checker demanded and obtained, as a precondition for selling not only the obsolete Checker acquired with each medallion but also his entire fleet replacement for the coming year. Indeed, this procedure is confirmed by The New York Times article of April 13, 1964 (annexed hereto as Exhibit "J") describing this illegal "trade-in" sale as a "package deal designed to bolster the sale of cabs that Checker manufactures." And while time has not permitted discussions with other operators who obtained National's medallions and discovery of plaintiff has not yet been had on this specific and crucial point, these facts, once uncovered, could not doubt reveal why Checker's sales in New York City did not begin to shrink until the early 1960s.

when Markin's leverage based on these tie-in sales completely ceased.

Moreover, even this investigation, when accomplished, would not tell the full story on the illegal "tie-in" sales, for when National financed the medallion acquisitions by taxicab operators, the operators were further tied-in by a written contract provision requiring the purchaser to replace, again, his entire fleet with Checker until his debt was paid off. (An example of one such contract is annexed hereto as Exhibit "K".) And while this too is another aspect of plaintiff's claim that must be disgorged from Checker on discovery, what is abundantly clear is that Checker long controlled and tied up the replacement market for innumerable taxicabs in New York City and appears to complain that, at long last, the normal market forces have begun to operate freely.

Plaintiff, of course, did not take this loss of his tie-in sales lying down, for as reflected in The New York Times article of April 13, 1964 (annexed hereto as Exhibit "J") and confirmed by the Musico affidavit, Mr. Markin then urged the Hack Bureau to issue 2,000 more medallions to fill the vacuum. Our attorneys' interviews with taxicab operators reveal that this activity, which depressed the value of medallions, incurred for Checker the open hostility of almost the entire industry, which it now claims it cannot sell to, so much so that Mr. Musico swears that at that time he "wouldn't have taken a Checker if they were given to [him] free" (p. 3). Not content with that,

Mr. Levine swears that Mr. Markin further alienated the industry with his letter to the Daily News (annexed to the Levine affidavit as Exhibit as Exhibit "A") of July 9, 1964 self-righteously urging (after he had left the New York City taxicab operating business) an increase in driver wages without a corresponding increase in fare.

While defendants have not been able to explore the full extent of the industry's hatred of Mr. Markin-- and its corresponding effect on sales--its existence can be no better revealed than by an article appearing in the New York Daily News on March 22, 1967 (annexed hereto as Exhibit "L"). Entitled "Mr. Big Insists Fare Hike Is a Brain Child of Greed", the author cites Mr. Markin as complaining that his potential customers do not "deserve any increase and [don't] need one...challeng[ing them] to prove he's a liar." The article further quotes Mr. Markin as stating that when he is "through" with his potential customers, the ones, he complains, are not buying enough of his taxicabs, he will "spit on their graves." Defendants have not been able, in the brief period available, to assess the effect of this open warfare between Checker and its potential customers and it is another area where discovery must be had.

While pages more could be set forth demonstrating the fatal factual gaps in plaintiff's purported claim and defendants' critical need for discovery from plaintiff (particularly as to many of the matters exclusively within its knowledge) and also third persons concerning plaintiff's new claim and defendants' defense thereto, enough has been

said to demonstrate the total inappropriateness of granting plaintiff summary judgment on the showing here made. However, more than that, defendants have labored at great lengths in their accompanying Memorandum to demonstrate that even assuming the factual contentions in the light most favorable to plaintiff, defendants are entitled to summary judgment on the legal questions raised, barring plaintiff's claim strictly as a matter of law. This has been done with the strong conviction that this Court will so consider the matter, with an eye to the over-riding judicial interest of saving all parties, and the Court, further needless time and expense.

s/ Robert Ehrenbard

Sworn to before me this
24th day of October, 1967.

s/ Joseph Warren
Notary Public

JOSEPH WARREN
Notary Public, State of New York
No. 03-9539130
Qualified in Bronx County
Cert. Filed in New York County
Commission Expires March 30, 1968

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MARTIN B. PEARLMAN, et al., :
Plaintiffs, :
-against- :
DAVID R. MARKIN, et al., : 69 Civ. 5397(MP)
Defendants. :
-----X

OBJECTIONS OF CHRYSLER CORPORATION
TO SUBPOENA PURSUANT TO
RULE 45(d)(1)&(2) OF THE FEDERAL
RULES OF CIVIL PROCEDURE

Chrysler Corporation ("Chrysler") hereby objects to the Subpoena, dated July 19, 1972, which commands Chrysler to testify on behalf of the plaintiffs and produce certain documents designated on Schedule "A" annexed thereto, in its entirety, on the following grounds:

1. The attorneys for plaintiffs are disqualified for reasons which should not be disclosed herein or in open court. Chrysler respectfully requests that any argument, application or proceeding concerning this ground for objection be heard by the Court in camera under such circumstances as the Court may deem appropriate to protect its confidentiality and to avoid injury or embarrassment to the individuals involved.

* * *

Dated: New York, New York
August 15, 1972

KELLEY DRYE WARREN CLARK CARR & ELLIS

By Robert Ehrenbard
Robert Ehrenbard
Attorneys for Chrysler Corporation
350 Park Avenue
New York, New York 10022
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For Your Information: FROM PUBLIC RELATIONS DEPARTMENT

NEW YORK TIMES -- October 16, 1966



CHRYSLER CORPORATION

Dodge Rebellion by Dealers Is Far From the First

By ROBERT WALKER

When 38 Dodge dealers sprung a surprise assault on the Chrysler Corporation here last week, it was far from being the first Dodge rebellion.

The corporation's aggressive six-year program to rebuild its dealer network has involved Chrysler in a series of wrangles with its older, established dealers. At least six lawsuits have arisen directly or indirectly out of the program.

In the latest development, 38 dealers in the New York area called a news conference last Monday to announce the formation of the Metropolitan Independent Dodge Dealers Association.

As counsel, the association had retained Roy M. Cohn, who told the news conference he would press Chrysler for various reforms in its dealer relations.

At the end of the week, Chrysler spokesmen said they had heard nothing from Mr. Cohn, but that the charges, as detailed in press reports, were groundless.

Other sources in the industry pointed out that Chrysler had been more aggressive in the nineteen-sixties by establishing dealers, who had charged in general that the new competition was unfair.

Move Explained

It was suggested—and firmly denied by the local Dodge dealers' association—that this was really what the New York group's protest was all about. One source said that Chrysler had acknowledged and promised to remedy "a few bad situations" in the New York area.

It was further suggested—and denied by the association—that Chrysler was being needed into prompt action on these situations, and that other points in the manifesto released Monday were in the nature of window dressing.

One veteran of the business said, for instance, that Chrysler's provision for continuity of ownership when a dealer retires or dies—about which the group complained—is exactly like the provisions in all the contracts in the industry.

A knowledgeable and neutral industry source, neither dealer nor Chrysler official, outlined the background this way:

When Chrysler's current management began trying about six years ago to strengthen a faltering company, the dealer network had been eroded to fewer than 3,500 outlets.

Today, Chrysler has about 6,500 dealers and its sales gains are proportionally the highest in the industry.

This growth, however, was accomplished with a program so aggressive that established dealers were and still are complaining about competition in some areas from new dealers set up and largely financed by Chrysler.

In 1961, Chrysler abandoned the general industry practice of requiring that a new dealer put up 25 per cent of the original investment in the retail outlet, mainly because it could not find enough qualified prospects with enough capital fast enough to cover market areas where it was weak.

Equity Reduced

Required initial equity could be 12.5 per cent, and in some cases special loans and other arrangements could cut the percentage further.

A dealer thus started was expected, Chrysler asserted at all times, to build his equity in the business as fast as possible. The corporation christened the program Dealer Enterprises. Of its 6,500 existing outlets, only 115 now are what are termed D.E. dealerships.

The plan did build the network and Chrysler's share of the automobile market did start to recover, but some established dealers complained that outlets were proliferating faster than sales, so that each dealer's share actually was declining.

They complained to the corporation, to the National Automobile Dealers Association and to their own dealer advisory councils. They said:

"Chrysler sometimes did not stop when abandoned markets had been recovered, but began locating D.E. dealerships—referred to often by the complainants as 'factory stores'—too close to established dealers who had their markets in hand."

Sales quotas for D.E. outlets were far below those of established retailers, enabling the former to begin earning volume bonuses with which to cut prices.

D.E. dealers were allowed and even encouraged by Chrysler to operate at a loss as long as they were selling plenty of cars.

A Closed Meeting

Matters came to a head once at the National Automobile Dealers Association convention in Las Vegas in February, 1965. Chrysler called a closed meeting of all its dealers and announced what it called a major policy change—no more D.E. outlets

would be permitted to open without the dealer's putting up a minimum 12.5 per cent of the capital; all special arrangements would be terminated.

The source who outlined this train of events said that a fog of charges and counter-charges almost perpetually clouds the facts of the dispute. He said his impression was that Chrysler dealers have steadily had less and less about which to complain—especially with sales up 3.5 per cent to date this year in comparison with those of last year while the Ford Motor Company was barely holding its own and sales of the General Motors Corporation and American Motors Corporation were down.

An objective view was equally elusive in the matter of six lawsuits pending against Chrysler, three in the Pittsburgh area, one in Philadelphia, one in Chicago and one in St. Paul.

Lawyers for the plaintiffs, who have based their suits wholly or partly on the Sherman antitrust legislation or the Automobile Dealers Day in Court Act of 1954, said that D.E. competition or arbitrarily high sales quotas or both were direct causes of action.

A spokesman for Chrysler's legal department—who said he could not argue the specific merits of individual cases pending before the courts—nevertheless held that generally most of these suits involved simple disputes about contracts.

"Quite rightly," he added, "like any competent lawyer, these lawyers call in all the supporting legislation they think might help them. This enables anyone to call the suits 'antitrust' cases if he wants to—until they're decided."

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Rebel Dodge Dealers Organize

NEW YORK. — A group of 58 New York-area Dodge dealers who feel they are being treated unfairly by the factory have formed the Metropolitan Independent Dodge Dealers Assn. and retained lawyer Ray M. Cohn as counsel.

The group's objective is "to obtain greater cooperation from Chrysler Corp. and to correct certain inequities which now characterize the manufacturer's relations with its franchised dealers," Cohn said.

Cohn charged that the current

franchise contract is "20 years behind the times."

The 58 dealers have been loosely organized for the past couple of years in an informal effort to correct the inequities they feel exist.

However, their efforts have resulted in "no action" and the group moved to organize and set up a formal method of dealing with the factory, he said.

COHN told Automotive News that he had contacted George Higgins, Dodge assistant general sales

manager, to advise him of formation of the group and ask for a meeting in the near future when grievances could be set forth and discussed.

In addition, he said he sent a letter to Dodge detailing the formation of the new organization and asking for a meeting to enlarge on company practices which the 58 dealers object to.

There are 58 Dodge dealers in the New York Metropolitan area, Cohn said. He added they account

(Continued on Page 4, Oct. 17)

10-17-66

over \$60 million in annual sales, about 5 percent of Dodge's national total.

"We did not go into this without the where-withal to see it through," Cohn said. "If our discussions with the factory do not produce positive results, we will take whatever steps are necessary to see this through."

ONE of the dealer complaints was the way in which minimum sales quotas are set up, which Cohn charged that Dodge uses to play one dealer against another.

One association member said he was given unrealistic sales quotas, requiring him to sell several hundred cars before he could receive a \$20 high-volume bonus.

This dealer said that a nearby factory-subsidized competitor began getting the \$20 bonus after selling 100 cars, enabling that outlet to begin undercutting him early in the model year.

Cohn said that the setting of minimum sales quotas forms the basis of incentive and bonus programs, "even though these quotas are frequently unrealistic with relation to area sales potential."

"As a result of bonus payments, some favored dealers have a definite price advantage over others located in the same area," Cohn said.

ANOTHER complaint of the group was what Cohn called failure to protect existing franchisees.

"On at least two occasions during the past year, the company has declared as 'non-designated' an area already being covered by a franchised dealer," he said.

"The result is to destroy the resale value of present franchisees and the goodwill of existing dealerships."

One dealer said that Chrysler had moved a dealership to within a mile of his site in August, 1963.

The group also complained that the franchise agreement is written to preclude perpetuation in the event of the dealer's death. Cohn said his clients want the right to pass on their franchises to their heirs.

THEY also charged that the factory has shifted the cost of fixing any structural or mechanical defect in new cars discovered dur-

ing delivery preparation to the dealer.

The association said it costs up to \$68 a car to make pre-delivery service inspections, while the factory's suggested prep charge is only \$25 to \$50, depending on the model.

Another complaint, said Cohn, was directed at "operation of factory-owned and controlled retail outlets which act as stimulator dealers without regard to net profit, thus competing unfairly with independent franchised dealers."

A Chrysler Corp. spokesman said this complaint was apparently directed partly against Chrysler's Dealer Enterprise program, under which the company sets up and finances persons without the capital to establish dealerships in the usual way.

The dealers, however, charged that setting up such dealerships was a "sideline" and the real purpose was to saturate areas with dealerships in an effort to increase the factory's market share.

THE dealer group also charged the factory with "coercive advertising policies, including forced participation by dealers in the corporation's institutional advertising program on an uneconomic basis."

Cohn said he had taken particular interest in the charge leveled against advertising policies and hinted at antitrust implications.

"Though the manufacturer calls the dealers' contributions 'voluntary' they are quite the opposite," he said.

The association also considers the corporation's special advertising assistance to new dealers unfair to existing franchisees who do not receive commensurate benefits.

The group said that dealers must pay \$15 a car into an institutional advertising program, but that if any dealer wants to withdraw it takes a two-thirds majority vote of Dodge dealers in the region to permit it.

RAPHAEL COHEN, chairman of the Dodge dealer group's steering committee and operator of Merit Motors, Inc., Yonkers, said that the dealers have tried to keep their dispute with the factory a closed matter, but had come to the conclusion that this did no good.

"We are not interested in any other franchisees," he said. "We

(Continued on Page 75, Oct. 2)

think Dodge makes a fine product and we want to continue selling it.

"Corrective action will help to increase Dodge sales and benefit the company and the car-buying public as much as ourselves. We are, in a sense, in the position of a man who wants to save his marriage and seeks the services of a marriage counselor rather than rushing to the divorce court."

In addition to Cohen, members of the steering committee include: Harold Reese, Reese Brothers, Lynbrook; Martin W. Frankel, Tremont Dodge Corp., Bronx; Erwin M. Lutzer, Stapleton & Schneider Motor Sales, Jackson Heights, and Mel Davis, S & W Sales Co., Queens.

REese said that Chrysler Corp. has been very progressive in its personnel and labor relations.

"But it has been very reluctant to extend any democratic process to its dealer organization," he said. "We have millions of dollars invested in our Dodge franchises and really want to work with the company in building business for Chrysler and for ourselves."

Committee members said Dodge dealers in other areas are not being solicited to "join this Dodge rebellion," but that they believe similar problems exist in other urban areas.

Dodge Division said that machinery exists for airing dealer complaints, through the Dodge Dealers Advisory Council, and said that no charges of "coercive advertising policies," for instance, had ever been raised.

COHEN said the dealers are looking for "standardization of franchise, property right protection of the franchises, which means perpetuation of franchise, uniformity in practice of sales quotas, designation of dealer areas, assumption by the company of the responsibility for structural and mechanical problems which are rightfully theirs and non-coercive advertising practices."

The dealers themselves appeared to be most concerned with operation of factory outlets, which

they said were disrupting the market.

One dealer told *American News* that the Dealer Enterprise operations were often able "to sell their vehicles below the price paid by the independent dealer."

Another dealer said: "Dealerships are being established on unsound, uneconomic basis, which limits their ability to operate profitably."

Chrysler Dodge

209 a

58 Dodge Dealers in This Area At Odds With Chrysler Corp.

By ROBERT WALKER

Fifty-eight Dodge auto dealers in the New York area made a public issue yesterday of their grievances against the Chrysler Corporation. They said they had been trying

privately for at least two years to settle several differences with the company.

Claiming to represent dealers with sales volume of \$40-million a year, a newly formed committee charged that part of Chrysler's relatively improved sales performance this year has been achieved through the use of cut-rate, factory-financed dealerships, which had been set up in the sales territories of established franchise owners.

Roy M. Cohn was retained as counsel for the association.

Questions Dared

Pressed to specify how far the group was prepared to carry the dispute, spokesmen for the Metropolitan Independent Dodge Dealers Association ducked questions about court action, but vowed that they "would take any steps necessary to protect the interests of this group."

At a news conference here, Mr. Cohn made the following points:

¶Franchise contracts are unfair because there is no national standard or uniformity, no provision for continuity if a franchise holder dies or retires, and no equality in advertising bonus payments for high volume.

Dealers are made responsible for "obvious structural and mechanical defects" for which the factory should pay.

¶Dodge dealers are coerced into paying \$15 per car sale into a fund for Chrysler institutional advertising that does them no immediate good.

Chrysler spokesmen in New York and Detroit said the calling of the news conference and

the formation of the association had taken them by surprise. The company officials generally declined specific comment on the association's allegations, but they advanced the following arguments:

¶The Dodge division has more than 3,000 dealers, and more than 90 in the New York area—compared with a dissident group of 58 members—and it has "perhaps the best dealer relations" in the industry.

¶Muchinery already exists for airing dealer complaints—through the Dodge Dealers Advisory Conference—at which no charges of, for instance, "coercive advertising policies" ever have been raised.

¶The association's attack on "factory-financed" competition appeared to be directed partly against Chrysler's program called "Dealer Enterprise." Under the program, the company sets up and initially finances persons without the capital to buy or establish dealerships in the usual way.

Spokesmen for the new association charged that the setting up of such assisted dealerships was so much a side-effect of the program that it almost constituted a smokescreen for Chrysler's real purpose—to saturate areas with dealerships in an effort to cut the market share of competing manufacturers.

A statement by the association charged that on at least two occasions during the last year, the company had declared as "nondesignated" an area already being covered by a franchised dealer. This, according to the association, marred the resale value of the existing franchises, as well as their goodwill.

When representatives of the association were asked at the news conference for a specific

instance of what they considered unfair competition, one member said that Chrysler had moved a dealership to within a mile of the site of his business in August, 1965.

At that time, he said, he was assured that the competitor would be nothing but a taxi dealer. "But it soon became obvious that an underground, cut-rate traffic in cars was hurting us," he asserted.

He said he was told six months ago at a meeting with local Chrysler officials that the situation would be corrected.

Finally, he recalled, he went to Detroit last summer, where he was told at the Chrysler headquarters that the dealership was a full-fledged Dodge dealer, but that every effort would be made to "see about moving it farther away."

A Chrysler spokesman, when told of the dealer's assertions, denied that any assurance had been given that the dealership would remain a taxicab outlet. Another association member said he was given unrealistic sales quotas, so that he was required to sell several hundred cars before being given a \$20

bonus per car for achieving high volume.

He charged that a nearby factory-subsidized competitor began getting the \$20 bonus after selling 100 cars, enabling him to begin undercutting the established dealer early in the model year.

A loosely organized group called the Metropolitan Independent Dodge Association has been negotiating on all these differences—more or less privately—with Chrysler since 1964, it was noted.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

2108

K.D.M. & W.

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Ace Dodge, Inc., Bishop, White & White, Inc., :
Blue Ribbon Garage, Inc., Byrnes Nolan, Inc., : Index No.
Couch Bros., Crabtree Motor Sales, D. A. :
Motors, Delta Dodge, Inc., Dursi Motor Sales, :
Inc., Farmingdale Garage, Inc., Flag Motors, :
Gallagher's, Inc., Gaynor-Taylor, Inc., :
G & B Sales & Services, Incorporated, : Plaintiff
Gramatan Dodge Co., Inc., Glen Head Motors, : designates
Inc., Glenn Motors, Inc., Greene Motors, :
Gilmartin Motor Sales Corp., Haff Dodge, Inc., : NEW YORK
Helms Bros., Inc., Bob Hirsch, Inc., Hunter :
Motors, Inc., Mac-Tun Motors, Inc., : COUNTY as the
Main Line Dodge, Inc., Millstream Motors, Inc., : place of trial
Nassau Motors Inc., Neptune Motors, Inc., :
New Hyde Park Dodge, Inc., Ocean Spray Motor :
Sales, Inc., Park Dodge, Inc., Phil's Auto : The basis of
Sales, Piebes Auto Sales Corp., Queensboro : the venue is
Auto Sales Corporation, S & W Sales Co., Inc., : residence of
Schneider-Trotte Corp., Schroeder's Garage, : defendant
Inc., Shore Dodge, Inc., H. Stilwell Motor : CHRYSLER MOTORS
Sales, Inc., Stapleton & Schneider Motor Sales, : CORPORATION
Inc., Stevens Dodge, Inc., and Tremont :
Dodge, Inc., :

Plaintiffs, : S U M M O N S

- against -

New York Region Dodge Advertising : Plaintiffs reside
Association, Inc., Chrysler Motors : in New York
Corporation, Nicholas Bosko, Raymond Cox, : State
Leon Brauser, Harold Epstein, Harold :
Peterfreund, Herbert Rhein, William Stein, : Counties of
Allen W. Sweig and Richard Verrilli. : Queens, Suffolk,
: Nassau, Brooklyn
: and
Defendants. : Westchester
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To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in
this action and to serve a copy of your answer, or, if the

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complaint is not served with this summons, to serve a notice of appearance, on the Plaintiffs' Attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, September 8, 1967

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Attorneys for Plaintiffs
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New York, New York 10022

rec'd
Hammond & Scriber PC
6/4/74 2⁴⁵ PM #2.